Supreme Court, U. S.
FILED
MAY 1 1980
MICHAEL RODAK, JR., CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1728

HOT SPRINGS COUNTY SCHOOL DISTRICT NUMBER ONE, et al,

Petitioners,

vs.

WASHAKIE COUNTY SCHOOL DISTRICT NUMBER ONE, et al,

Respondents.

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF THE
STATE OF WYOMING

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

NO._____

HOT SPRINGS COUNTY SCHOOL DISTRICT NUMBER ONE, and SUBLETTE COUNTY SCHOOL DISTRICT NUMBER NINE

Petitioners,

vs.

WASHAKIE COUNTY SCHOOL DISTRICT NUMBER ONE, DONNA MOBERLY, MARY JANE SCHMELTZER, RANDALL RIDEOUT, HAROLD McDONALD, HARRY UJIFUSA, ROBERT MOODY and JAMES ARGERIS, being all of the members of THE BOARD OF TRUSTEES OF WASHAKIE COUNTY SCHOOL DISTRICT NUMBER ONE; MARY JANE SCHMELTZER as next friend for CHRISTOPHER SCHMELTZER, JOE SCHMELTZER, and FRANCES SCHMELTZER, minors; RANDALL RIDEOUT as next friend for JASON RIDEOUT, ANTHONY RIDEOUT, and MICHAEL RIDEOUT, minors; HAROLD McDONALD as next friend for KEVEN McDONALD, KEITH McDONALD, DAVID McDONALD, KENNETH McDONALD, and BRIAN McDONALD, minors, HARRY UJIFUSA as next friend for KELLY UJIFUSA and GAYLE UJIFUSA, minors; ROBERT MOODY as next friend for TODD MOODY, SHERRI MOODY, CINDY MOODY, JOHN MOODY, AL MOODY, and SCOTT MOODY, minors; and JAMES ARGERIS as next friend for JAYME ARGERIS, TAWN ARGERIS, and GRETT ARGERIS, minors; UINTA COUNTY SCHOOL DISTRICT NUMBER SIX, G. GRANT REDDEN, CLINT WALKER, F. DANNY EYRE, DONALD R. CARROLL and CURTIS MORGAN, being all of the members of THE BOARD OF TRUSTEES OF UINTA COUNTY SCHOOL

DISTRICT NUMBER SIX, FREMONT COUNTY SCHOOL DISTRICT NUMBER 25, DENNIS TIPPETS, L. J. GERAUD, PATRICIA B. FERRIS, ALICE KUCERA, STANLEY SMALLEY, and THOMAS YOUTZ, being all of the members of THE BOARD OF TRUSTEES OF FREMONT COUNTY SCHOOL DISTRICT NUMBER TWENTY FIVE, ALBERT B. SCHULTZ, ED HERSCHLER, Governor, State of Wyoming, LYNN SIMONS, State Superintendent of Public Instruction, SHIRLEY WITTLER, Wyoming State Treasurer, JOHN PATTON, KEITH WEST, DR. DENIS LYMAN, BARBARA ROGERS, KEITH BECKER, REDELL HOOPER, KAREN HAND, DR. DONALD BLAKESLEE, GLENN ENGLEKING, being all of the members of the WYOMING STATE BOARD OF EDUCATION, PARK COUNTY SCHOOL DISTRICT NUMBER SIXTEEN, CAMPBELL COUNTY SCHOOL DISTRICT NUMBER ONE, CONVERSE COUNTY SCHOOL DISTRICT NUMBER ONE, CARBON COUNTY SCHOOL DISTRICT NUMBER TWO, SWEETWATER COUNTY SCHOOL DISTRICT NUMBER ONE, and LINCOLN COUNTY SCHOOL DISTRICT NUMBER ONE,

Respondents,

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF WYOMING

To The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States.

Petitioners pray that a Writ of Certiorari issue to review the final Order and Judgment of the Supreme Court of the State of Wyoming, entered in this matter on February 8, 1980.

OPINIONS BELOW

The opinion of the Supreme Court of Wyoming is reported at 606 P.2d 310 and is printed in Appendix A hereto, infra, page A-1. The decision of the Supreme Court of Wyoming upon rehearing is reported at 606 P.2d 340, and is printed in Appendix B hereto, infra, page B-1. Pursuant to such decisions, a Judgment and Order dated March 25, 1980, was entered in the District Court of Hot Springs County, Wyoming, upon April 1, 1980, which Judgment is printed in Appendix C, infra, page C-1.

JURISDICTION

The decision of the Supreme Court of Wyoming, Appendix A, infra, page A-1, was entered on January 15, 1980. A timely Petition for Rehearing was filed and thereafter a final Order denying rehearing was entered on February 7, 1980, Appendix B, infra, page B-1. The jurisdiction of this court is invoked under 28 USC, §1257 (3).

QUESTIONS PRESENTED

Have the petitioners been denied due process and equal protection under the Fourteenth Amendment by rendition of a final decision in the Wyoming Supreme Court based upon evidence developed sua sponte by the Wyoming Supreme Court, when petitioners were given no warning of the use of such evidence, nor any opportunity to rebut, examine or explain, nor any advance indication that a final judgment would result?

Are petitioners "persons" entitled to claim rights of due process and equal

protection of the laws under the Fourteenth Amendment against the acts of the Wyoming Supreme Court?

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

The constitutional provision involved is Section 1 of the Fourteenth Amendment to the Constitution:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The provisions of Wyoming Statutes giving to petitioners the same rights as other litigants to the use of the courts and judicial process are:

> W.S. (Wyoming Statutes Annotated 1977, Republished Edition) 21-3-101. "Each school district now or hereafter legally organized within this state shall be a body corporate."
>
> W.S. 21-3-111. "(a) The board of trustees in each school district within the state may:
>
> (i) Sue and be sued in the name by which the district is designated.

(iv) Employ legal counsel and bear the cost of litigation."

The Statutes and Rules of Procedure of the State of Wyoming providing to all litigants a right to judicial determination of issues of fact, to present defenses and objections, to a trial of issues and affording an opportunity to be heard are printed and attached hereto as Appendix G.

STATEMENT OF THE CASE

Each petitioner is a school district within the State of Wyoming.

Upon June 20, 1978, three other school districts within the State of Wyoming, with members of their boards of trustees acting as such, as the next friend of their children, and as taxpayers, and a superintendent of one school district filed in the District Court of Hot Springs County, Wyoming, a complaint seeking a declaratory judgment that the Wyoming system of financing public education is unconstitutional, and other relief. Petitioners were named as defendants along with the Governor, State Treasurer and Superintendent of Public Instruction of the State of Wyoming, members of the State Board of Education, and six other school districts. Each defendant filed a motion to dismiss on several grounds, including lack of a justiciable controversy, that plaintiff school districts lacked authority and standing to bring suit, lack of specificity, inability of the court to provide a remedy, lack of jurisdiction, and others. Until a ruling upon such motions was entered no answers were required, and no answer was filed by any defendant.

Following arguments and submission of memoranda of law upon such motions, the district court thereafter made and entered its Order granting motions to dismiss, a printed copy of which is attached as Appendix D, infra, page D-1. The plaintiffs in such action appealed to the Supreme Court of Wyoming.

No evidentiary hearing was ever held; no discovery proceedings had; and no evidence was presented by the parties to either the district court or the Wyoming Supreme Court.

After the submission of briefs of law and arguments thereon directed solely to the issues presented by the Order granting motions to dismiss, the Wyoming Supreme Court took the matter under consideration and thereupon proceeded to gather a number of tables and statistics from the Wyoming State Library and reports of the Wyoming State Department of Education and, among other things, found a classification on the basis of wealth, stated that the burden was upon those defending the classification (petitioners and other defendants), stated that the proposition of those defending was unsupported by convincing argument or authority (although no opportunity to give such argument or authority was ever afforded), stated that petitioners had shown no other viable criteria or test to a test which the Supreme Court developed of equality of dollar input; and remanded the matter to district court with direction to vacate the Order of Dismissal and enter Judgment consistent with its opinion.

Petitioners filed a timely Petition for Rehearing which is printed as Appendix E

hereto, infra, page E-1, alleging, among other reasons for a rehearing, that:

> (1) Petitioners had been denied due process and a fair hearing.
>
> (2) That a factual hearing was required and that such a hearing is guaranteed to petitioners by the statutes and rules of Wyoming; and that the Supreme Court of Wyoming did not have jurisdiction to render a decision or a judgment on evidence originally acquired by the Supreme Court itself, without offer by any party or opportunity of any party to rebut or cross examine. Petitioners therewith filed their brief in support of the Petition for Rehearing.

The first sixteen pages of the brief of petitioners are printed and attached hereto as Appendix F, infra, pages F-1 - 16. In such brief petitioners did further set up and plead to the Wyoming Court their rights under the Constitution of the United States, stating:

> ". . .The legislature having given appellee school districts the full right to use of the courts and the procedures therein, such right 'in accord with the will of its creator' cannot be denied by the courts, and such denial is a violation of equal protection under both the Fourteenth Amendment of the United States Constitution, and Sections 8 and 34 of Article I of the Wyoming Constitution." infra, page F-3
>
> "The procedural due process provided by the statutes and rules of Wyoming is substantially the same as by decision is

granted to individuals under the Fourteenth Amendment." infra, page F-4

"The right to present evidence is essential to the fair hearing required by the Due Process Clause." infra, page F-4

"The provision for a hearing implies the privilege of introducing evidence." infra, page F-5

"There is no hearing in the constitutional sense where the party does not know what evidence is offered or considered and is not given an opportunity to protest, explain or refute." infra, page F-5

"The right under the Due Process Clause to a full hearing includes the right of a party whose rights are sought to be affected to introduce evidence and have judicial findings based upon it." infra, page F-5

The Petition for Rehearing was denied, and subsequently Judgment was entered as directed by the Wyoming Surpeme Court. A copy of the Judgment is attached hereto as Appendix C, infra, page C-1.

REASONS FOR ALLOWANCE OF THE WRIT

When the Wyoming Supreme Court rendered its decision, directing entry of final judgment upon this matter which was then before the court upon an appeal by plaintiffs from an Order dismissing their Complaint, the Wyoming Court denied to all defendants in the matter, including petitioners, the fundamental due process of an

opportunity to be heard by a trier of fact. The Wyoming Court gave no advance notice of its intention to render a final judgment - It received and heard no evidence except that which it developed sua sponte. It gave to no party any opportunity to examine, rebut or explain such evidence or to present any legal authority or agrument relating thereto.

The Wyoming Supreme Court then, upon receiving a request for rehearing, calling these matters to its attention and requesting an opportunity for a "hearing", denied such request.

The opportunity to be heard is a fundamental requisite of due process of law. To judge in a contested proceeding implies the hearing of evidence from both sides in open court, a comparison of the merits of the evidence, a conclusion from the evidence of where the truth lies, the application of appropriate laws to the facts found and the rendition of judgment accordingly. Manley vs. Georgia, 279 US 1, 73 L.Ed. 575, 578.

The right to present evidence is essential to the fair hearing required by the Due Process Clause. Jenkins vs. McKiethen, 395 US 411, 23 L.Ed.2d 404, 421.

The provision for a hearing implies the privilege of introducing evidence. Baltimore and O.R. Company vs. U.S., 264 US 258, 265, 68 L.Ed. 667, 674.

There is no hearing in the constitutional sense when the party does not know what evidence is offered or considered and is not given an opportunity to protest, explain or refute. 16A AmJur, Constitu-

tional Law, Section 848, page 1059. The right under the Due Process Clause to a full hearing includes the right of a party whose rights are sought to be affected to introduce evidence and have judicial findings based upon it. Baltimore and O.R. Company vs. U.S., 298 US 349, 80 L.Ed. 1209, 1224.

The Wyoming Supreme Court itself in Holm vs. State, 404 P.2d 740, 744, has stated: "One of the most basic elements of due process is the right of each party to be apprised of all the evidence upon which an issue is to be decided, with the right to examine, explain or rebut such evidence. . . And, the right to hear and controvert all evidence upon which a factual adjudication is to be made includes the right to hear and cross examine witnesses."

The right to confront and cross examine witnesses is a fundamental aspect of procedural due process and such right applies not only in criminal proceedings, but also in non-criminal proceedings, including administrative or quasi judicial proceedings, Jenkins vs. McKiethen, 395 US 411, 23 L.Ed. 2d 404, 421. Wilner vs. Committee on Character and Fitness, 373 US 96, 10 L.Ed.2d 224, Wolff vs. McDonnell, 418 US 539, 41 L.Ed.2d 935.

In Ohio Telegraph Co. vs. Public Utilities Comm., 301 US 292, 57 S.Ct. 794, 81 L.Ed. 1093, this Court held that the fundamentals of due process were denied when a decision was based upon evidence obtained without notice to the parties, or opportunity to dispute, examine or explain that evidence.

The procedural due process rights of a state were specifically recognized by the court in State vs. Anderson (Minn.) 19 NW2d 70. A statute provided for a hearing and the court, at page 74, said: "We now hold that such right to answer and to have a hearing at which witnesses may be examined and cross examined is the absolute right of the State."

The next question presented in the Petition is whether petitioners, having been granted the right to litigate a controversy between them and other school districts, have the right to demand procedural due process guaranteed by the Fourteenth Amendment. It appears that the precise question is one of first impression before this Court.

This Court has had many occasions to consider the extent to which a municipal corporation can question the actions of its creator, the state legislature. In many of those cases, this Court has held that a municipal corporation, being a mere political subdivision of the state created as a convenient agency for the exercise of its governmental powers, had no right to question the actions of its creator. See, e.g., Williams vs. Baltimore, 289 U.S. 36, 53 S.Ct. 431, 77 L.Ed. 1015 (1933) and other cases cited in Annot. 116 A.L.R. 1037 (1938).

In those cases, however, the municipal corporations attempted to object to legislative action or action taken pursuant to statute which adversely affected its powers, authority or property.

In no decision which petitioners have found has any court ever before - after

having determined that the political subdivision (or any other party) has the standing or capacity to sue - denied such litigant the full judicial process equal to that afforded to every other litigant. In this case the Wyoming State Legislature as creator of petitioners has granted the petitioners the full right to use the courts and the procedures therein. Such right having been granted by the legislature, a denial of their right by the court was a violation of equal protection and due process.

Under Wyoming law, school districts are corporate bodies (Wyo. Stat. §21-3-101 (1977)) with the power to sue and be sued, to employ legal counsel and bear the cost of litigation. (Wyo. Stat. §21-3-111 (1977)).

Although the Wyoming Supreme Court has held that municipal corporations do not have the power to question the legality of legislation passed by their creators, Wyoming State Treasurer vs. City of Rawlins, 510 P.2d 301, 302 (Wyo. 1973), the Wyoming Supreme Court in this case has specifically ruled that the Plaintiff school districts had the power and auhtority to question the constitutionality of the system of financing public education created by the Wyoming Legislature. One of the bases of the Defendants' motions to dismiss this case was that the Plaintiff school districts, as political subdivisions of the state, lacked standing to question the legality of the legislative financing system. In its opinion, the Wyoming Supreme Court said:

"The school districts and the members of school boards are charged with the

> responsibility of providing education to the children of Wyoming and are tangibly injured if the statutes which guide their hands disenable them from so providing. . . .(W)e hold that each of the named appellants has standing to sue under the circumstances of this case." Washakie County School District No. 1 vs. Herschler, 606 P.2d 310, 317 (Wyo. 1980)

Of course, the converse must also be true. If the Plaintiff school districts are entitled to question the legality of the system of financing public education, the Defendant school districts are equally entitled to support their contention that the system was constitutional.

The question, then, is whether the petitioners, as parties to this litigation, are entitled to demand due process of law guaranteed under the Fourteenth Amendment of the United States Constitution. As was noted above, the petitioners' research has not led them to a case where this Court has decided that precise question. Several decisions of this Court, however, do have a bearing on the question.

The Wyoming Supreme Court determined that the school districts have "standing" - and that the interest sought to be protected is within the zone regulated by the Constitution - within the test determined by this Court in Data Processing Service vs. Camp, 397 US 150, 90 S.Ct. 827, 25 L.Ed. 2d 184.

Petitioners respectfully submit that, it having been determined that their interests in this matter are within the zone of the Wyoming Constitution relating to school financing - then other constitutional

guarantees of a fair hearing under both State and U.S. Constitutions cannot be separated or segregated.

This Court has, on a number of occasions, determined whether various entities were "persons" entitled to the protection of various constitutional provisions. For instance, in South Carolina vs. Katzenbach, 383 U.S. 301, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966) this Court held that a state was not a person for the purposes of the due process clause of the Fifth Amendment to the United States Constitution. On the other hand, in First National Bank vs. Bellotti, 435 U.S. 765, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978) this Court held that corporations were persons for purposes of availing themselves of the Fourteenth Amendment guarantees. This Court said:

> "It has been settled for almost a century that corporations are persons within the meaning of the Fourteenth Amendment." Citing Santa Clara County vs. Southern Pacific R. Co., 118 U.S. 394, 6 S.Ct. 1132, 30 L.Ed. 118 (1886); and Covington and Lexington Turnpike R. Co. vs. Sandford, 164 U.S. 578, 17 S.Ct. 198, 41 L.Ed. 560 (1896), Id. at 435 U.S. 780, fn. 15.

In reaching that determination, this Court noted that states were not free to define the rights of their creatures without constitutional limit. The court said:

> "Otherwise, corporations could be denied the protection of all constitutional guarantees, including due process and the equal protection of laws." Id. at 435 U.S. 779, fn. 14.

Admittedly, a distinction may be made between the petitioners, which are public corporations, and the appellant in Bellotti, which was a private corporation. It is submitted, however, that that distinction makes no difference to the principle involved, which is whether parties to legal proceedings can expect and demand the due process guarantees of the Fourteenth Amendment.

In fact, this Court has previously recognized that private and public corporations should be treated as natural persons for purposes of constitutional analysis. In Monell vs. Department of Social Services, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978) this Court considered whether school districts and other municipal corporations were "persons" subject to liability for denial of civil rights under the Civil Rights Act of 1871 (42 U.S.C. 1983). The decision in Monell turned upon the Court's analysis of the legislative history of the Act.

After that analysis, however, the Court considered the status of private and public corporations in 1871. The court said:

> "In addition, by 1871, it was well understood that corporations should be treated as natural persons for virtually all purposes of constitutional and statutory analysis." Id. at 436 U.S. 687.

The Court noted that this had not always been the case, and it was not until Louisville R. Co. vs. Letson, 2 How. 497, 11 L.Ed. 353 (1844) that the Court held that a corporation was to be deemed as a person for all intents and purposes, and treated as a citizen of a state as much as a natural person. The Court then went on to say:

"And only two years before the debate on the Civil Rights Act, in Cowles vs. Mercer County, 7 Wall 118, 121, 19 L.Ed. 86 (1869), the Letson principle was automatically and without discussion extended to municipal corporations. Under this doctrine, municipal corporations were routinely sued in the federal courts. . ." Id. at 436 U.S. 688

In Monell this Court noted that the usual meaning of the word person would extend to municipal corporations. Id.

Decisions of other state courts appear to be split on the question. In City of Mountlake Terrace vs. Wilson, 549 P.2d 497 (Wash. App. 1976) the Washington court said:

"The due process clause protects people from government; it does not protect the state from itself. Municipal corporations are political subdivisions of the state, created for exercising such governmental powers of the state as may be entrusted to them and they may not assert the protection of the due process clause against actions of the state government." Id. at 498

A similar holding was made in Moses Lake School District vs. Big Bend Community College, 503 P.2d 86 (Wash. 1972). In 1974 the Court denied the standing of a school district to raise constitutional issues relating to school financing. Northshore School District vs. Kinnear, 530 P.2d 178 (Wash. 1974).

On the other hand, in School District No. 23 vs. School Planning Committee, 361 P.2d 360 (Colo. 1961) the Supreme Court of

Colorado said:

> "Both Federal and State Constitutions provide that one may not be deprived of his property except by due process of law. Plaintiff, even though a mere school district, has the right to insist that its property shall not be taken without adherence to this constitutional safeguard. On this basis alone Plaintiff has sufficient interest to maintain the action." Id. at 361

The Illinois court has held that a school board may assert a denial of equal protection of the laws if it is a member of a class being discriminated against, even though due process guarantees in the ordinary sense do not extend to them. Cronin vs. Lindberg, 360 N.E.2d 360 (Ill. 1976).

In Iowa, the Court, although stating that a school district is not a "person" under provisions of the constitution, did allow the procedural due process of a hearing. Lincoln Tp. School District vs. Redfield Consolidated School District, 283 N.W. 881 (Iowa 1939).

In Arizona, although stating that a municipality has no rights or privileges arising under the U.S. Constitution which it may assert against the state which created it, the court held that municipalities have rights granted to them under the State Constitution which they may assert against a state statute - and the right to bring suit to protect or enforce such rights is inherent in the power granted. Town of Wickenburg vs. State, 565 P.2d 1326 (Ariz. 1977).

Minnesota and Missouri courts have stated that school districts are not persons within the protections of due process. Village of Blaine vs. Independent School District, 138 N.W.2d 32 (Minn. 1965); State vs. State Tax Commission, 589 S.W.2d 613 (Mo. 1979).

It is submitted, however, that there is no logical reason to hold that the Petitioners, and through them the taxpayers and patrons they represent, are not entitled to avail themselves of the due process guarantee of the Fourteenth Amendment. It must be remembered that the Petitioners were created by the state government specifically for the purpose of governing and maintaining the public schools within their boundaries. Their creator, the Wyoming State Legislature, gave the school districts board powers to effectuate that purpose, including the right to be a party to this litigation to assert their position on the questions raised. They did so, however, as representatives of the taxpayers and patrons within the districts.

The U.S. Supreme Court, in its decision rendered in Board of Liquidation vs. Louisiana, 179 U.S. 622, 45 L.Ed. 347, found a similar situation. In the Louisiana court the want of capacity was expressly put at issue and passed on, the court holding that both bodies (commissions established by the state) occupied such a fiduciary relation as to empower them to assert that enforcement of provisions of the state Constitution would impair the obligations of contracts. Motions to dismiss for the reason that the commissions did not have capacity to plead impairment of contracts in violation of the Constitution of the United States, were then held to be without colorable support. As Mr. Justice White

stated (p. 637) such argument "is but to say at one and the same time that there was capacity and incapacity to assert and protect the contract rights."

Hindsight would suggest that the Defendant school districts should have assisted an interested taxpayer in intervening to assert his rights as a taxpayer in this litigation. Had that been done, there would be no question but that the taxpayer would be entitled to avail himself of the due process guarantee of the Fourteenth Amendment. At the outset of this case, however, none of the parties had any reason to believe that the Wyoming Supreme Court would shortcut the judicial process and reach its determination on the merits based upon evidence about which the defendants had no notice and no chance to rebut, assumptions of crucial factual matters, and without even giving the Defendants a chance to present argument on the substantive legal questions involved. The mere fact that the parties to the litigation were the entities created by the State to enforce the rights of its taxpayers should not be an excuse to deprive those taxpayers, through the school district, of their constitutional rights.

It is respectfully submitted, therefore, that this case falls directly within the ground set forth in Rule 19.1(a) of the Revised Rules of the Supreme Court of the United States. When the Wyoming Supreme Court denied the petitioners' Petition for Rehearing, it clearly decided a federal question of substance in a way that is not in accord with the applicable decisions of this Court. The petitioners, and through them the taxpayers and patrons they represent, are entitled to at least the fundamental elements of due process of law,

which includes the right to have notice of and to rebut opposing evidence, the right to have a trier of fact (including a jury if the petitioners are ever given the opportunity to make a demand for one) determine disputed factual issues, and the right to present its position on the substantive legal questions which are to be determined.

CONCLUSION

This Petition for Writ of Certiorari should, for the foregoing reasons, be granted.

Respectfully submitted,

ORIGINAL SIGNED BY
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APPENDIX A

IN THE SUPREME COURT, STATE OF WYOMING

OCTOBER TERM, A.D. 1979

1/15/80

WASHAKIE COUNTY SCHOOL DISTRICT NUMBER ONE, DONNA MOBERLY, MARY JANE SCHMELTZER, RANDALL RIDEOUT, HAROLD McDONALD, HARRY UJIFUSA, ROBERT MOODY and JAMES ARGERIS, being all of the members of THE BOARD OF TRUSTEES OF WASHAKIE COUNTY SCHOOL DISTRICT NUMBER ONE; MARY JANE SCHMELTZER as next friend for CHRISTOPHER SCHMELTZER, JOE SCHMELTZER, and FRANCES SCHMELTZER, minors; RANDALL RIDEOUT as next friend for JASON RIDEOUT, ANTHONY RIDEOUT, and MICHAEL RIDEOUT, minors; HAROLD McDONALD as next friend for KEVEN McDONALD, KEITH McDONALD, DAVID McDONALD, KENNETH McDONALD, and BRIAN McDONALD, minors, HARRY UJIFUSA as next friend for KELLY UJIFUSA and GAYLE UJIFUSA, minors; ROBERT MOODY as next friend for TODD MOODY, SHERRI MOODY, CINDY MOODY, JOHN MOODY, AL MOODY, and SCOTT MOODY, minors; and JAMES ARGERIS as next friend for JAYME ARGERIS, TAWN ARGERIS, and BRETT ARGERIS, minors;
UINTA COUNTY SCHOOL DISTRICT NUMBER SIX, G. GRANT REDDEN, CLINT WALKER, F. DANNY EYRE, DONALD R. CARROLL and CURTIS MORGAN being all of the members of THE BOARD OF TRUSTEES OF UINTA COUNTY SCHOOL DISTRICT NUMBER SIX,* FREMONT COUNTY SCHOOL DISTRICT NUMBER 25, DENNIS TIPPETS, L. J. GERAUD, PATRICIA B. FERRIS, ALICE KUCERA, STANLEY SMALLEY, and THOMAS

YOUTZ, being all of the members of THE BOARD OF TRUSTEES OF FREMONT COUNTY SCHOOL DISTRICT NUMBER TWENTY FIVE, and ALBERT B. SCHULTZ,

Appellants (Plaintiffs),

v.

ED HERSCHLER, Governor, State of Wyoming, LYNN SIMONS, State Superintendent of Public Instruction, SHIRLEY WITTLER, Wyoming State Treasurer, JOHN PATTON, KEITH WEST, DR. DENIS LYMAN, BARBARA ROGERS, KEITH BECKER, REDELL HOOPER, KAREN HAND, DR. DONALD BLAKESLEE, GLENN ENGLEKING, being all of the members of the WYOMING STATE BOARD OF EDUCATION, PARK COUNTY SCHOOL DISTRICT NUMBER SIXTEEN, CAMPBELL COUNTY SCHOOL DISTRICT NUMBER ONE, CONVERSE COUNTY SCHOOL DISTRICT NUMBER ONE, HOT SPRINGS COUNTY SCHOOL DISTRICT NUMBER ONE, CARBON COUNTY SCHOOL DISTRICT NUMBER TWO, SUBLETTE COUNTY SCHOOL DISTRICT NUMBER NINE, SWEETWATER COUNTY SCHOOL DISTRICT NUMBER ONE, and LINCOLN COUNTY SCHOOL DISTRICT NUMBER ONE,

Appellees (Defendants).

Appeal from the District Court of Hot Springs County, the Honorable Joseph F. Maier, Judge.

John W. Davis and Jeffrey A. Donnell, Worland, signed the bried; and Mr. Davis appeared in oral argument on behalf of the appellants.

John D. Troughton, Attorney General, Mary B. Guthrie, Assistant Attorney General, Lawrence J. Wolfe, Legal Intern; T. Michael Golden, Rawlings, for Carbon County School District No. 2; Ross D. Copenhaver, Powell, for Hot Springs County School District No. 1 and Sublette County School District No. 9; Dennis L. Sanderson, Kemmerer, for Lincoln County School District No. 1; J. Patrick Hand, Douglas, for Converse County School District No. 1; L. B. Cozzens, Cody, for Park County School District No. 16; and Wade Brorby, Gillette, for Campbell County School District No. 1, signed the brief for appellees. Messrs. Wolfe and Golden appeared in oral argument on behalf of appellees.

Before RAPER, C.J., McCLINTOCK, THOMAS, and ROSE, JJ, and HILL, D.J.**

*Uinta County School District Number Six, G. Grant Redden, Clint Walker, F. Danny Eyre, Donald R. Carroll and Curtis Morgan, being all of the members of the Board of Trustees of Uinta County School District Number Six did not participate in this appeal.

**Justice Rooney having recused himself, District Judge Robert A. Hill, Second Judicial District, was assigned.

RAPER, Chief Justice.

On June 20, 1978, the appellants brought action under the Wyoming Uniform Declaratory Judgments Act 1/ seeking relief from the Wyoming system of financing public education. The appellants described in their complaint the inequities that are resulting from the financing system currently used in this state and asked as relief that the system be declared violative of the Wyoming Constitution. In the latter part of August, 1978, numerous motions to dismiss 2/ were filed by the defendants. Memoranda of law were submitted by all parties on the various issues raised in the motions to dismiss. After some intermediate proceedings, the district court entered its order dismissing the complaint on May 4, 1979. The order dismissing the complaint stated no ground upon which it was based. However, a letter from the district court to the parties under date of April 10, 1979, sheds some light on the action:

> "I have considered the various memorandums of all counsel previously submitted with regard to the above captioned case and specifically with regard to my prior request that there be considered the possibility of stipulations which would permit the submission of the case to the Wyoming Supreme Court on reserved constitutional questions.

"Counsel have obviously taken the position that they do not desire to cooperate in such an endeacor and since the Court has no ability to require them to do so I can only conclude that we cannot proceed in that manner at this time. I felt that it was important to the citizens of this state and the various school districts that this case be resolved by a final decision of the Supreme Court in the earliest and most economical manner but that obviously is not going to happen.

"Consequently, as I indicated at the oral hearing in Thermopolis, the Court will grant the motions to dismiss. Defendant's counsel are directed to prepare appropriate orders and to submit the same to all counsel for approval and then to the Court for signature and entry.

1/ Sec. 1-37-101 to 1-37-115, W.S.1977.

2/ The defendants' time in which to answer was enlarged by the court under a stipulation entered into by the parties.

> "I presume that following that, this case could languish on for several appeals and many years before we get any final determination on the merits, for which I am genuinely regretful."

The district court's action in dismissing appears to be antithetical to his expressed hope for an early and economical decision of the case and the avoidance of multiple appeals. As will become evident as this opinion progresses, the district court's action will in fact not serve to delay a substantive decision of this crucial question. We will hold the Wyoming system of school financing unconstitutional in that it fails to afford equal protection in violation of the Wyoming Constitution.

The motions to dismiss were based on several grounds. Essentially they were these:

(1) Appellants' complaint does not state a claim on which relief can be granted.

(2) The appellants' complaint lacks specificity, i.e., it does not specifically identify the statute or statutes which they allege to be in contravention of the constitution but rather merely assert that the "system of financing public

education" is in violation of the constitution.

(3) The appellants' each lack standing to bring the complaint.

(4) The appellants' action is not a justiciable controversy: The questions presented are political in nature and must be addressed by the legislature rather than the courts.

(5) The appellants' action is defective because they failed to join every taxpayer as a party.

(6) The appellants' action should be dismissed for failure to request a proper remedy.

Since the appellees asserted these numerous grounds as bases for dismissal in the district court and since the district court did not specify on which ground or grounds he based his grant of dismissal, we will address each of these issues serially, giving to each a brief but clearly defined answer, before proceeding to the principal question raised by this appeal--i.e., is the Wyoming system of financing public education in violation of the Wyoming Constitution? As the momentum of the opinion accelerates, these preliminary questions will fade from sight as superficial.

Appellees assert that the appellants' complaint does not state a claim on which relief can be granted. The appellants are claiming that under the Wyoming Constitution they have a right to a school financing system that provides a relatively uniform amount of money on an annual per-pupil basis to each of the Wyoming school districts, 3/ i.e., they are entitled to an equal educational opportunity. Further they claim that under the financing system which has been established by the legislature they are denied such an equal educational opportunity. Wyoming has adopted the Uniform Declaratory Judgments Act, supra. It is evident from a reading of the Act and the case law interpreting it that the instant action was properly brought under the auspices of that legislation. The appellants seek a determination of their rights and status under the constitution and statues of this state.4/

3/ We are well aware that the formula that will provide equality will be quite complex. More money may be needed in one school district to achieve quality education than in another because of, e.g., transportation costs, building maintenance costs, construction costs, logistic considerations, number of pupils with special problems, et cetera. However, it is not a problem that cannot be solved, challenging though it might be.

4/ The most significant provisions are:

> Sec. 1-37-102, W.S.1977:
> "Courts of record within their respective jurisdictions may

We will not deny the direction of the Act that it be liberally construed and administered, particularly when there is a question of great public importance as is the one before us. Brimmer v. Thomson, Wyo. 1974, 521 p.2d 574. Those statutes empower the courts to grant relief of a declaratory nature. We can only conclude that the appellants' complaint states a claim on which relief can be granted.

> declare rights, status and other legal relations whether or not further relief is or could be claimed. No proceeding is open to objection on the ground that a declaratory judgment may be either affirmative or negative in form and effect, and such declarations shall have the effect of a final judgment."
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> Sec. 1-37-103, W.S.1977:
>
> "Any person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by the Wyoming constitution or by a statute, municipal ordinance, contract or franchise, may have any question of construction or validity arising under the instrument determined and obtain

Appellees assert that the complaint lacks specificity in that it fails to enumerate the statutes which it claims to be in violation of the Wyoming Constitution in that appellants contented themselves with stating merely that the "system" of financing public education is in violation of the constitution. Although it certainly may have been better had the appellants been more detailed in their allegations, we cannot conclude that the complaint was so deficient as to require dismissal, particularly since we do not intend to be as specific in our disposition as appellees might wish. Whether the specificity standard has been satisfied is to be determined in terms of whether the pleadings give fair notice to the opposing party. Harris v. Grizzle, Wyo. 1979, 599 p.2d 580.

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a declaration of rights, status or other legal relations."

Sec. 1-37-107, W.S.1977: "The enumeration in W.S. 1-37-103 through 1-37-106 does not limit or restrict the exercise of the general powers conferred in W.S. 1-37-102 in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty."

We cannot ignore that appellees demonstrated from the very beginning their complete understanding of the statutes that appellants complained of and how those statutes contributed to the ailments described in the complaint. We can only conclude that the appellants' use of the language "system" of financing public education, under the special and unique circumstances of this case, was as plain and clear a reference to statutes as if they had cited them by chapter and section numbers, We have no problem locating the pertinent constitutional provisions and related statutory sections; they are easily identifiable. To urge us to decide otherwise would be to ask us to stick our heads in the sand.

Appellees have asserted that each of the named appellants lack standing to sue under the circumstances presented by this case. As defined in Black's Law Dictionary, pp. 1260-1261, 5th ed. (1979):

> "Standing to sue doctrine. 'Standing to sue' means that party has sufficient stake in an otherwise justifiable controversy to obtain judicial resolution of that controversy. Sierra Club v. Morton, 405 U.S. 727, 92 S.Ct. 1361, 1364, 31 L.Ed.2d. 636. Standing is a concept utilized to determine if a party is sufficiently affected so as to insure that a justiciable controversy is presented to the court. The requirement of 'standing' is satisfied if it can be said that the plaintiff has a legally

protectible and tangible interest at stake in the litigation. Guidry v. Roberts, La. App., 331 So.2d 44,50. Standing is a jurisdictional issue which concerns power of federal courts to hear and decide cases and does not concern ultimate merits of substantive claims involved in the action. Weiner v. Bank of King of Prussia, D.C. Pa., 358 F. Supp. 684, 695.

"Standing is a requirement that the plaintiffs have been injured or been threatened with injury by governmental action complained of, and focuses on the question of whether the litigant is the proper party to fight the lawsuit, not whether the issue itself is justiciable. Carolina Environmental Study Group, Inc. v. U. S. Atomic Energy Comm., D.C.N.C., 431 F.Supp. 203, 218. Essence of standing is that no person is entitled to assail the constitutionality of an ordinance or statute except as he himself is adversely affected by it. Sandoval v. Ryan, Colo.App., 535 P.2d 244, 247."

Standing is a concept used to determine whether a party is sufficiently affected to insure that a justiciable controversy is presented to the court.

67A C.J.S., Parties, Sec. 12, p. 662. It is a necessary and useful tool to be used by courts in ferreting out those cases which ask the courts to render advisory opinions or decide an artificial or academic controversy without there being a palpable injury to be remedied. However, it is not a rigid or dogmatic rule but one that must be applied with some view to realities as well as practicalities. Standing should not be construed narrowly or restrictively. Wisconsin's Environmental Decade Inc.. v. Public Service Commission of Wisconsin, 1975, 69 Wis.2d 1, 230 N.W.2d 243, 249. Further, as said in Residents of Beverly Glen, Inc. v. City of Los Angeles, 1973, 34 Cal.App.3d 117, 109 Cal.Rptr. 724,727:

> "In recent years there has been a marked accommodation of formerly strict procedural requirements of standing to sue (citation) and even of capacity to sue (citation) where matters relating to the 'social and economic realities of the present-day organization of society' (citation) are concerned. Accordingly, we have seen a retreat from * * * formalism and rigidity* * *."

The appellants in this suit are three school districts and the school board members of those districts, 5/ the school board members as taxpayers and as parents of children attending the school districts and several students who attend schools in

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5/ One of these school districts and its

Washakie County School District Number One.

Educating the youth of our state is an important function performed by our state government. Our constitution, as we shall see, plainly expresses the commitment of a free people to the value of a thorough education. The school districts and the members of school boards are charged with the responsibility of providing education to the children of Wyoming and are tangibly injured if the statutes which guide their hands disenable them from so providing. Parents are keenly concerned and suffer tangible injury if their children themselves are, obviously, tangibly injured if they do not uniformly receive the best education that tax resources can provide. With these considerations in mind, we hold that each of the named appellants has standing to sue under the circumstances of this case.

Appellees asserted that the question presented by the declaratory judgment action does not present a justiciable controversy and is essentially a political question that can and must be answered

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board members, which was a plaintiff (appellant) below, did not join in this appeal, but that does not affect the issues. Their interests neither add to nor detract from the interests of appellants nor are they necessary to an adjudication.

only by the legislature. We agree that the legislature must act; but, as shall be made clear as we proceed, it must enact tax legislation to support public schools consistent with the spirit and letter of the Wyoming Constitution. This question of justiciability is closely tied to those we have answered above. We concede that the issues raised in a declaratory judgment action must constitute a justiciable controversy. The criteria which qualify a justiciable controversy are set out in Brimmer v. Thomson, supra, 521 P.2d at 578, quoting from Sorenson v. City of Bellingham, 80 Wash.2d 547, 496 P.2d 512, 517:

> "'* * * First, a justiciable controversy requires parties having existing and genuine, as distinguished from theoretical, rights, or interests. Second, the controversy must be one upon which the judgment of the court may effectively operate, as distinguished from a debate or argument evoking a purely political, administrative, philosophical or academic conclusion. Third, it must be a controversy the judicial determination of which will have the force and effect of a final judgment in law or decree in equity upon the rights, status or other legal relationships of one or more of the real parties

> in interest * * *. Finally, the proceedings must be genuinely adversary in character and not a mere disputation, but advanced with sufficient militancy to engender a thorough research and analysis of the major issues.* * *'"

We find each of these qualifications to be met in the instant case. Nonetheless, we point out that in declaratory judgment actions there is a well-recognized exception that the rule requiring the existence of justiciable controversies is somewhat relaxed in matters of great public interest or importance. Brimmer, supra, 521 P.2d at 578. We have already made clear our view and will amplify on it, that the matter of education involves a fundamental interest of great public importance. This is no more a political question than any other challenge to the constitutionality of statutes. Declaring the validity of statutes in relation to the constitution is a power vested in the courts as one of the checks and balances contemplated by the division of government into three departments--legislative, executive and judicial--ever since first enunciated in Marbury v. Madison, 1803, 5 U.S. (1 Cranch) 137 and carried forward into Wyoming state government by Sec. 1, Art. II, Wyoming Constitution.

Appellees assert that all taxpayers in this state had to be served in order

to comply with Sec. 1-37-113, W.S.1977.6/ We do not agree. A summons and copy of the complaint were served upon the Attorney General of the State of Wyoming.7/ This was in compliance with the statute, Sec. 1-37-113, W.S.1977. Also see, 12 Uniform Laws Annotated, Declaratory Judgments Act, Sec. 11; and Annotations, 71 A.L.R.2d 723. There is no merit to the claim that appellants' complaint should have been dismissed for failure to name all taxpayers as defendants. Such a requirement would be a departure from reason.

6/ Sec. 1-37-113, W.S.1977:

> "When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, the municipality shall be made a party and may be heard. If the statute, ordinance or franchise is alleged to be unconstitutional, the attorney general of the state shall be served with a copy of the proceeding and may be heard."

7/ The appellees named in the complaint (appropriate substitutions have been made to account for changes to officeholder and committee membership) are the Governor

Finally, the appellees assert that the motion to dismiss was properly granted because the appellants did not seek a proper remedy. The appellants asked as their remedy that the Wyoming system of public school financing be declared unconstitutional and that the courts retain jurisdiction over the controversy, staying the declaration and delaying further remedy until the Wyoming legislature shall next again meet. Appellants may not be entitled to the exact relief they requested, but their complaint was not subject to dismissal because of the prayer for relief. The appellees cited no authority nor have we uncovered any which would require the dismissal of appellants' complaint on this ground. Indeed, as shall be further developed in the course of this opinion, the demand for relief is quite similar to that granted by courts which have addressed the question of unconstitutional public school financing statutes, which we shall cite.

We hold that the claim of plaintiffs-appellants has been brought on solid jurisdictional and procedural ground and the controversy is ripe for decision.

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of the State of Wyoming, Wyoming's Superintendent of Public Instruction and State Treasurer, all members of the Wyoming State Board of Education, and several school districts in which disproportionate tax base wealth exists.

Courts have a duty to uphold the constitutionality of statutes which the legislature has enacted if that is at all possible, and any doubt must be resolved in favor of constitutionality. Witzenburger v. State, Wyo. 1978, 575 P.2d 1100, 1112; Lund v. Schrader, Wyo. 1971, 492 P2d 202, 206. Though the supreme court has the duty to give deference to legislative pronouncements and to uphold constitutionality when possible, it is the court's equally imperative duty to declare a legislative enactment invalid if it transgresses the state constitution. Witzenburger, supra, 575 P.2d at 1114. In our consideration of this case, we have consistently kept these basic principles in mind to avoid a declaration of unconstitutionality--but doubt is not present.

This court has previously considered school financing in the State of Wyoming and at that time recognized that ad valorem taxes for school purposes were not equalized, as required by Sec. 28, Art. I, Wyoming Constitution.8/ Sweetwater County Planning Committee for Organization of School Districts v. Hinkle, Wyo. 1971, 491 P.2d 1234. That case will be referred to as Hinkle where hereafter mentioned in this opinion. The court there made certain suggestions to the legislature which were intended as a bare-bone proposal for legislation intended to divide equally amongst the school

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8/ Section 28, Art. I, Wyoming Constitution: "* * *All taxation shall be equal and uniform." Our decision in

districts all funds derived from ad valorem tax levies, as contemplated by Sec. 28, Art. I, Wyoming Constitution.9/ We affirm the proposition that, as nearly as practicable, funds derived from ad valorem tax levies must be equally divided amongst the school districts of the entire state. The court indicated that it had been considerably influenced by the landmark case of Serrano v. Priest, 1971, 5 Cal.3d 584, 96 Cal. Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187, a case which in general held that a system of public school financing which relies heavily on local property taxes and causes substantial disparities among individual school districts in amount of revenue available per pupil invidiously discriminates against the students of the poor persons and is invalid as a violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States and the equivalent provision of the California Constitution. We see nothing in our study to indicate

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this case will not rest upon this constitutional provision, though it undoubtedly bears upon the total constitutional picture of taxation with respect to public schools.

9/ The court excluded from consideration funds derived from the six-mill state levy; motor vehicle fees; fines and forfeitures; Forest Revenue; Land Income; Taylor Grazing and all state and federal funds not derived from ad valorem taxes levied at the county level.

that, in this state, poor persons or the children of poor persons are affected any differently than the children of persons in more affluent circumstances. All children in some districts are deprived. This situation does not divest the above-cited case of its soundness or applicability to the situation we have in Wyoming.

Violation of the Fourteenth Amendment of the U. S. Constitution as a ground for invalidating state systems of school finance has lost any viability since the decision of the United States Supreme Court in San Antonio Independent School District v. Rodriquez, 1973, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16, which held that the Texas system had no federal constitutional flaws in that the right to education is not explicitly or implicitly guaranteed by the terms of the United States Constitution. We find no need to dwell on Rodriquez any further because the decision we reach will be based on the provisions of the Wyoming Constitution, which is the authority we are governed by in this case.

This court retained jurisdiction in the Hinkle case for a "final decision after the next regular session of the legislature and for whatever further orders or disposition may be necessary in the meantime." In February, 1972, the court relinquished jurisdiction to permit the parties to settle their differences. In closing the case, this court declared that while it could no longer ignore inequalities in the matter of taxation for school purposes, nothing could be done until the legislature convened and thereafter some

adversely affected taxpayer could maintain an action on the question of invidious discrimination if it still existed after the legislature had convened and adjourned. Hinkle, supra, upon reopening, Wyo. 1972, 493 P.2d at 1050. The filing of this lawsuit breathed new life into that controversy and the determination of this court to provide a suitable remedy to this problem.

In a later case, where a consideration of the financing of schools within a county was at issue, this court recognized the serious nature of the disparity in assessed valuation per pupil and referred to students as "victims" when located in school districts having a low valuation ratio as compared to school districts having a high valuation ratio. In that case, the forecast of Hinkle that the problem of unequal assessed valuation may necessarily become the subject of statewide action was reaffirmed and it was announced that this court cannot ignore that courts of other states have held students are denied equal protection 10/ when the disparity of valuation becomes too great. Johnson v. Schrader, Wyo. 1973, 507 P.2d 814.

10/ Equal protection is granted by Sec. 34, Article 1, Wyoming Constitution wherein it is provided "All laws of a general nature shall have a uniform operation." Nehring v. Russell, Wyo. 1978, 582 P.2d 67.

Both Hinkle and Johnson involved a consideration of the Wyoming School District Organization Law of 1969, Sec. 21-5-101, et seq., W.S.1977 (as amended) (Sec. 105 through 150, ch. 111, Session Laws of Wyoming, 1969), which had as one of its purposes to "provide a wiser and more efficient use of public funds for education by making it possible to reduce the disparity in per pupil valuation among school districts." Disparity was thus obviously a problem which the legislature was aware of and with which it was attempting to grapple. In view of its stated goal, the difficulty with that legislation is that it was not far reaching enough because, even if successful, it could only effect a reduction in disparity between school districts within each county. In 1971, when Hinkle was first decided, the disparity between counties was apparent. See appendix to opinion, Hinkle, supra, 491 P.2d at 1240-1250. It was apparent in the Johnson case as well. It is still apparent and has steadily grown even more imbalanced. It is an intricate unsettled question of statewide proportions. The question of inequality in school financing has been smoldering too long. The continuing dispute must be settled.

What is Wyoming's constitutional design of educational responsibility? "The legislature shall provide for the establishment and maintenance of a complete and uniform system of public instruction, embracing free elementary schools of every needed kind and grade, * * *." (Emphasis added.) Section 1,

Art. VII, Wyoming Constitution. "The general supervision of the public schools shall be entrusted to the state superintendent of public instruction, whose powers and duties shall be prescribed by law." Section 14, Art. VII, Wyoming Constitution. These and other constitutional expressions should leave no doubt that the legislature has complete control of the state's school system in every respect, including division of the state into school districts and providing for their financing. The legislature's powers are subject only to restrictions on discrimination on account of sex, race or color, Sec. 10, Art. VII; prescribing textbooks, Sec. II, Art. VII; and, sectarianism, Sec. 12, Art. VII. The matter of providing a school system as a whole and financing it is a responsibility of the legislature.

Financing of schools is assured by a broad spectrum of resources. With statehood came a grant by Congress of sections sixteen and thirty-six of each township in the state or in-lieu lands. Those lands and other miscellaneous property acquired by the state are held in trust as a "general school fund" and the annual income arising from the property is devoted exclusively to the support of free schools "in every county" in the state. Sections 2-8, Art. VII, Wyoming Constitution.

Under constitutional taxing authority there are several provisions:

1. A state tax for the support of schools: six mills on the dollar of the assessed valuation of the property in the state may be levied each year. Section 15, Art. XV, Wyoming Constitution.

2. A mandatory county tax for the support of schools of twelve mills on the dollar must be levied each year on the assessed valuation of the property in each county. The proceeds are distributed among the school districts within the county as the legislature shall provide. Section 17, Art. XV, Wyoming Constitution.

3. A part of county revenue from an annual tax levy of not to exceed twelve mills on the dollar "for all purposes including general school tax, exclusive of state revenue." Section 5, Art. XV, Wyoming Constitution.

4. An apparent unlimited power whereby the legislature shall make such further provisions "by taxation or otherwise, as with the

> income arising from the general school fund (trust income) will create and maintain a thorough and efficient system of public schools, adequate to the proper instruction of all youth of the state, between the ages of six and twenty-one years, free of charge; * * *." (Emphasis added.) Section 9, Art. VII, Wyoming Constitution.

Implementing the constitutional provisions are various statutes. The six mill state levy provided by Sec. 15, Art. XV, Wyoming Constitution is covered by Sec. 21-13-303, W.S.1977. The legislature provides a formula for levying less than a six mill state tax. The funds accrued are placed in a trust fund and cannot be transferred to any other fund or account. The money generated is transferred into the foundation program account, which we shall describe.

The twelve mill county tax for school support prescribed by Sec. 17, Art XV, Wyoming Constitution is regulated by Sec. 21-13-201, W.S.1977. The county treasurer collects the tax and:

> "(b) On or before September 1 of each year, the state department of education shall notify the treasurer of each county of the percentage proportion to be allocated from the county-

wide twelve (12) mill school levy to each school district in his respective county. The computation of the distribution of the countywide twelve (12) mill levy shall be made by the department of education on the basis of the number of classroom units for the previous year, as that number is computed in W.S. 21.1-231 (Sec. 21-13-308). (11/) This number, for each district, is to be converted into a percentage of the total number of classroom units for all school districts within the county. The county treasurer shall distribute the revenue arising from the countywide twelve (12) mill levy among the school districts of the county according to the percentage computed above, and pursuant to W.S. 21.1-223 (Sec. 21-12-207.)" (Footnote added.)

11/ This statute is a part of the complex system of distribution of funds under the foundation program, which we shall discuss at various points in this opinion. The foundation program provides a significant balancing factor in school financing, but it can only go so far.

The share of the general county tax for all county purposes, as a general school tax, as provided by Sec. 5, Art. XV, Wyoming Constitution, is limited by Sec. 21-13-205, W.S.1977, to not exceed three mills on the dollar, sufficient to raise $300.00 for each teacher and an amount for each school bus driver computed according to the formula set out in Sec. 21-13-202, W.S.1977.

In addition to the foregoing, and apparently justified under the general terms of Sec. 9, Art. VII, Wyoming Constitution, Sec. 21-13-101, W.S.1977, provides for a school district tax:

> "(a) Except as otherwise provided by law, the maximum rate of school district tax that may be levied for all school purposes, exclusive of bond interest and redemption, for any school district in any school year on each dollar of assessed valuation within the school district is as follows:
>
> "(i) In a unified school district, twenty-eight (28) mills for combined elementary and high school purposes, three (3) mills of which shall not be levied except with the approval of a majority of the voters voting on the proposition;

"(ii) Any elementary nonunified school district, sixteen and eight-tenths (16.8) mills for elementary school purposes, one and eight-tenths (1.8) of which shall not be levied except with the approval of a majority of the voters voting on the proposition, plus not to exceed an additional five (5) mills for tuition to be expended for high school students from the district."12/

This will be referred to in this opinion as the "Special District Levy." There is no specific authority for this tax in the state constitution such as in the case of the state tax, the county tax for schools and the general county tax.

At this point, the Wyoming School Foundation Program 13/ should be briefly discussed. Its intent is to guarantee a minimum education for every child by providing state financial assistance in inverse proportion to the tax paying ability of the local school district.

12/ All school districts have now been unified. As amended by Sec. 1 ch. 119, Session Laws of Wyoming, 1979.

13/ Sections 21-13-305 through 21-13-314, W.S.1977.

In other words, where local resources are high in some cases, little or no foundation funds are paid by the State to the district. Schools that raise relatively large amounts of money through property taxation receive considerable less support, if any, from the Foundation Fund than those districts where a comparable levy raises a smaller amount of money. If a district's assessed valuation-- its tax base-- is relatively high, it is able to raise enough money to go beyond the foundation program, whereas another district with low assessed valuation cannot increase its revenues to such a level even by taking advantage of all available local taxes.

The money apportioned to the schools from the Foundation Fund has several sources. In the Foundation Fund are placed all state moneys for elementary and secondary education, Sec. 21-13-306, W.S.1977, except the Land Income Fund which, by Sec. 21-13-301, W.S.1977, must be distributed among the counties according to the number of pupils in each, as determined by statutory direction.14/ See also, Sec. 21-13-301 and 21-13-302, W.S.1977, as amended. The six mill state levy on property, including motor vehicle registrations, is a Foundation

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14/ Section 8, Art. VII, Wyoming Constitution originally read the same as the statute cited. Section 8 was amended by resolution adopted by the 1978 legislature, ratified by vote of the people at the 1978 general election, and proclaimed in effect on November 25, 1978. It now provides "for the equitable allocation of such income among all

Fund primary source, but, in addition, the legislature appropriates money from the State's general fund. In 1978, $26,750,000 was appropriated from the general fund, Sec. 15, ch. 42, Session Laws of Wyoming, 1978, for the period July 1, 1978 and ending June 30, 1980.

The foundation program is intended to take into account not only a basic education but also to consider exceptional and handicapped children, vocational training, kindergarten, the problems of a one-teacher rural school, bus transportation, tuition paid by one district to another, other variables and supplemental aid for those districts with less than the minimum assessed valuation per classroom unit.15/

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school districts in the state." This income could now conceivably be included in the foundation program, but apparently the legislature meeting in 1979 did not take any action as a result of the amendment, other than refer to Average Daily Membership rather than according to number of pupils. For all practical purposes, ADM and number of pupils are the same.

15/ For an excellent description and detailed discussion of the foundation program, see, The Wyoming School Foundation Program, published by the State Department of Education, 1976, found in the Wyoming State Library.

The sources to pay the cost of education in Wyoming for 1977-1978 is illustrated and clarified by the following table and pie taken from the Statistical Report Series No. 3, Wyoming Public Schools Fund Accounting and Reporting, 1977-78, published by the Division of Planning, Evaluation and Information Services, State Department of Education, Page 1: 16/

16/ This court may take judicial notice of the official reports of the State Department of Education, Hinkle, supra, 491 P.2d and 1237. This particular tabulation and illustration will be referred to as Table 1. The statistics we will use in this opinion cover the period in question and are on file in the Wyoming State Library. Complete 1979 statistics are not yet available.

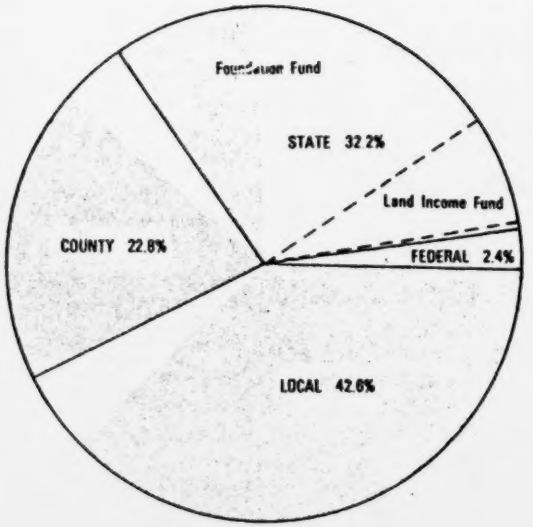
STATE SUMMARY: GENERAL FUND REVENUES 1977–78

LOCAL SOURCES	
Special District Taxes	$ 66,938,044
Motor Vehicle Tax	4,665,048
Car Company Tax	75,648
Delinquent Taxes	207,189
Parks & Recreation	26,342
Other Local	40,613
In-State Tuition	300,624
Out-State Tuition	230,417
Handicapped Students	129,080
Adult Education	32,767
Summer School	34,475
Cooperative Programs	93,947
Transportation Fees	50,013
Interest Income	991,930
Food Service	903
Admissions	428,750
Other Pupil Activity	232,086
Rentals	361,617
Contributions	19,772
Sale of Fixed Assets	498,747
Loss Compensations	225,975
Refunds, Prior Year	196,277
Fund Transfers	74,098
Miscellaneous	801,879
LOCAL TOTAL	$ 76,656,248

COUNTY SOURCES	
12 Mill County Tax	$ 33,624,737
12 Mill, Motor Vehicle	2,287,067
General County Tax	2,248,999
Gen. Co., Motor Vehicle	204,130
Delinquent Taxes	61,569
Fines and Forfeitures	2,397,864
12 Mill Car Co. Tax	32,822
Forest Reserve	132,202
Other County	89,571
COUNTY TOTAL	$ 41,078,962

STATE SOURCES	
Foundation Program	$ 45,178,665
Land Income Fund	12,277,350
Taylor Grazing	385,095
Other State	86,583
STATE TOTAL	$ 57,927,687

FEDERAL SOURCES	
P. L. 874	$ 4,209,911
Other	197,610
FEDERAL TOTAL	$ 4,407,521



Total General Fund Revenues: $180,070,409

Real Property Taxes

TABLE NO. 1

In this opinion we will consider for the most part the property tax sources of income for schools. There are other sources of income for the various school districts such as fines and forfeitures paid to the county treasurers pursuant to Sec. 5, Art. VII, Wyoming Constitution; 17/ gifts, Sec. 3, Art. VII, Wyoming Constitution, and Sec. 21-13-403, W.S. 1977; federal aid and grants, Sec. 21-13-401 through 21-13-403; and miscellaneous receipts as shown by the foregoing Table No. 1. The principal source of local school support comes from property taxes raised by mill (1/1,000th of one dollar or 1/10th of a cent) levy on each dollar of assessed valuation. It is this latter source, wherein originates the disparity and constitutional fault. Were all counties and school districts blessed with equal assessed property valuations within their boundaries with each having the same student population, there would be no problem; but it is common knowledge that such a phenomenon is not possible and statistical information bears that out. Even superficial reflection upon the system outlined above reveals that it will inherently create disparity. Nonetheless, that disparity must be demonstrated.

17/ Section 5, Art. VII, Wyoming Constitution:

> "All fines and penalties under general laws of the state shall belong to the public school fund the respective counties and be paid over to the custodians of such funds for the current support of the public schools therein."

There were fifty school districts in the State of Wyoming at the time this litigation was initiated. From the Statistical Report Series, No. 1, 1978 School District Property Valuations, Mill Levies and Bonded Debt, a report prepared by the Division of Planning, Evaluation and Information Services, State Department of Education, pages 6, 7 and 8 shows the wide range of assessed valuation per student and the various levies in all districts: 18/

18/ We will refer to this as Table 2 in this opinion.

1978 SCHOOL TAX LEVIES BY DISTRICT

COUNTY District		Assessed Val. Per Pupil	State School Levy	General County Levy	Equalization Levy	Special District Levy	Bond & Interest Levy	Other School Levy	Total School Levy
ALBANY									
1	Laramie	$ 17,525	6.000	1.420	12.000	25.000	9.000		53.420
BIG HORN									
1	Byron	42,518	6.000	1.100	12.000	25.000	9.040(1)		53.140
2	Lovell	44,885	6.000	1.100	12.000	23.900	2.630(2)		45.630
3	Greybull	31,077	6.000	1.100	12.000	25.000	.800(3)		44.900
4	Basin	29,609	6.000	1.100	12.000	25.000	6.350(4)		50.450
CAMPBELL									
1	Gillette	108,438	6.000	.283	12.000	25.000	2.332		45.615
CARBON									
1	Rawlins	46,595	6.000	.496	12.000	25.000	7.140		50.636
2	Saratoga	79,469	6.000	.496	12.000	22.000	7.000		47.496
CONVERSE									
1	Douglas	83,190	6.000	.305	12.000	22.958	7.498		48.761
2	Glenrock	61,741	6.000	.305	12.000	25.000	3.130		46.435
CROOK									
1	Sundance	35,331	6.000	.921	12.000	25.000	3.097		47.018
FREMONT									
1	Lander Elem.	46,057	6.000	.960	12.000	15.000	2.360		36.320
2	Dubois	22,689	6.000	.960	12.000	25.000	4.000		47.960
6	Pavillion	36,327	6.000	.960	12.000	25.000	4.910		48.870
9	Jeffrey City	37,540	6.000	.960	12.000	15.000	12.790		46.750
14	Ethete	13,070	6.000	.960	12.000	15.000	.640		34.600
21	Ft. Washakie	36,567	6.000	.960	12.000	15.000	11.980		45.940
24	Shoshoni	80,738	6.000	.960	12.000	25.000	3.220		47.180
25	Riverton	21,501	6.000	.960	12.000	25.000	7.090		51.050
27	Hudson	7,944	6.000	.960	12.000	15.000	- - -		33.960
38	Arapahoe	3,469	6.000	.960	12.000	15.000	5.030	5.000*	43.990
	Lander Valley HS	102,191	- - -	- - -	- - -	10.000	2.060		12.060

* Tuition

(1) 5.69 mills of this levy applies only to $2,419,126 in old districts # 19 and 20.

(2) Levy applies only to $6,845,599 in old District #3.

(3) Levy applies only to $6,034,645 in old H.S. District #1.

(4) Levy applies only to $4,972,008 in old District #17.

TABLE NO. 2

Page 1

1978 SCHOOL TAX LEVIES BY DISTRICT

COUNTY / District	Assessed Val. Per Pupil	State School Levy	General County Levy	Equalization Levy	Special District Levy	Bond & Interest Levy	Other School Levy	Total School Levy
GOSHEN								
1 Torrington	$ 14,078	6.000	2.413	12.000	25.000	1.746		47.159
HOT SPRINGS								
1 Thermopolis	91,014	6.000	.322	12.000	15.001	1.646		34.969
JOHNSON								
1 Buffalo	40,537	6.000	.705	12.000	25.000	6.700		50.405
LARAMIE								
1 Cheyenne	10,899	6.000	1.930	12.000	25.000	12.000		56.930
2 Pine Bluffs	27,358	6.000	1.930	12.000	25.000	1.430		46.360
LINCOLN								
1 Kemmerer	74,022	6.000	.540	12.000	25.000	5.590		49.130
2 Afton	25,571	6.000	.540	12.000	25.000	2.980		46.520
NATRONA								
1 Casper	15,747	6.000	1.350	12.000	25.000	5.850		50.200
NIOBRARA								
1 Lusk	36,027	6.000	1.019	12.000	25.000	- - -		44.019
PARK								
1 Powell	33,536	6.000	.503	12.000	28.000	- - -		43.503
6 Cody	38,464	6.000	.503	12.000	25.000	3.289		46.792
16 Meeteetse	209,543	6.000	.503	12.000	15.945	1.775		36.223
PLATTE								
1 Wheatland	35,489	6.000	.910	12.000	25.000	1.180		45.090
2 Guernsey	21,969	6.000	.910	12.000	25.000	2.710		46.620
SHERIDAN								
1 Ranchester	13,912	6.00	1.180	12.000	25.000	16.653		60.833
2 Sheridan	19,969	6.000	1.180	12.000	25.000	8.653		52.833
3 Clearmont	28,285	6.000	1.180	12.000	25.000	1.865		46.045

TABLE NO. 2

Page 2

1978 SCHOOL TAX LEVIES BY DISTRICT

COUNTY District	Assessed Val. Per Pupil	State School Levy	General County Levy	Equalization Levy	Special District Levy	Bond & Interest Levy	Other School Levy	Total School Levy
SUBLETTE								
1 Pinedale	$ 71,121	6.000	.479	12.000	20.889	4.435		43.803
9 Big Piney	87,994	6.000	.479	12.000	23.690	8.383		50.552
SWEETWATER								
1 Rock Springs	77,609	6.000	.310	12.000	22.231	3.670	2.690**	46.901
2 Green River	51,039	6.000	.310	12.000	25.000	10.240		53.550
TETON								
1 Jackson	24,082	6.000	.900	12.000	25.000	6.750		50.650
UINTA								
1 Evanston	20,214	6.000	1.550	12.000	25.000	5.040		49.590
4 Mountain View	11,615	6.000	1.550	12.000	25.000	3.770		48.320
6 Lyman	11,171	6.000	1.550	12.000	25.000	10.660		55.210
WASHAKIE								
1 Worland	19,446	6.000	1.087	12.000	25.000	9.511		53.598
2 Ten Sleep	32,198	6.000	1.087	12.000	25.000	- - -		44.087
WESTON								
1 Newcastle	26,896	6.000	.972	12.000	25.000	6.554		50.526
7 Upton	36,200	6.000	.972	12.000	25.000	2.552		46.524

** Building Fund

TABLE NO. 2

Page 3

The tremendous variation in assessed valuation and the amount available per student in each school district is dramatically illustrated by the following statistics 19/:

19/ Statistical Report Series No. 1, 1978 School District Property Valuations, Mill Levies and Bonded Debt, Division of Planning, Evaluation, and Information, State Department of Education, pages, 1-3. We will refer to this as Table 3.

1978 PROPERTY VALUATIONS BY COUNTY AND SCHOOL DISTRICT

COUNTY / District	1978 County Valuation	1978 District Valuation	1977-78 ADM	Valuation Per ADM 20/
ALBANY	$ 70,818,825			
1 Laramie		$ 70,818,825	4,041	$ 17,525
BIG HORN	79,131,336			
1 Byron		30,627,098(1)	720	42,538
2 Lovell		36,536,698(2)	814	44,885
3 Greybull		21,847,443	703	31,077
4 Basin		15,988,733(3)	540	29,609
CAMPBELL	494,261,159			
1 Gillette		494,261,159	4,558	108,438
CARBON	230,860,257			
1 Rawlins		125,434,244(4)	2,692	46,595
2 Saratoga		132,555,036	1,668	79,469
CONVERSE	209,716,635			
1 Douglas		154,150,141	1,853	83,190
2 Glenrock		55,566,494	900	61,741
CROOK	47,025,487			
1 Sundance		47,025,487	1,331	35,331
FREMONT	220,169,169			
1 Lander Elementary		66,229,861	1,438	46,057
2 Dubois		8,553,674	377	22,689
6 Pavillion		17,909,296	493	36,327
9 Jeffrey City		13,364,083	356	37,340
14 Ethete		4,626,811	354	13,070
21 Ft. Washakie		9,763,423	267	36,567
24 Shoshoni		32,618,327	404	80,738
25 Riverton		65,534,751	3,048	21,501
27 Hudson		746,772	94	7,944
38 Arapahoe		822,171(5)	237	3,469
Lander Valley High School		94,730,950	927	102,191

(1) Includes $1,973,377 from Park County.
(2) Includes $17,019,527 from Park County.
(3) Includes $6,875,732 from Park County.
(4) Includes $27,129,023 from Sweetwater County.
(5) High school district valuation is comprised of the combined valuation of Fremont County districts #1, 9, 14, 21 and 27.

20/ ADM is an abbreviation for:

> "'Average daily membership' [which] means the aggregate number of pupils present plus the aggregate number of pupils absent, divided by the actual number of days the school is in session for the year. Pupils who have withdrawn from school or who have been absent for more than ten (10) consecutive calendar days shall not be counted as members;" Section 21-13-305(a)(i), W.S.1977.

TABLE NO. 3
Page 1

1978 PROPERTY VALUATIONS BY COUNTY AND SCHOOL DISTRICT

COUNTY / District	1978 County Valuation	1978 District Valuation	1977-78 ADM	Valuation Per ADM
GOSHEN*	$ 37,356,696			
1 Torrington		$ 36,561,546(6)	2,597	$ 14,078
HOT SPRINGS	92,743,208			
1 Thermopolis		92,743,208	1,019	91,014
JOHNSON	56,792,256			
1 Buffalo		56,792,256	1,401	40,537
LARAMIE	165,698,772			
1 Cheyenne		144,058,644	13,217	10,899
2 Pine Bluffs		21,640,128	791	27,358
LINCOLN*	126,841,116			
1 Kemmerer		67,508,273	912	74,022
2 Afton		48,789,734	1,908	25,571
NATRONA	218,421,423			
1 Casper		218,421,423	13,871	15,747
NIOBRARA	22,657,481			
1 Lusk		22,949,037(7)	637	36,027
PARK*	227,401,533			
1 Powell		64,859,212	1,934	33,536
6 Cody		89,736,155	2,333	38,464
16 Meeteetse		46,937,530	224	209,543
PLATTE*	67,389,191			
1 Wheatland		59,764,098(8)	1,684	35,489
2 Guernsey		8,128,687(9)	370	21,969

NOTE: Counties starred (*) have a portion of their valuation assigned, for school purposes only, to a school district in another county, as shown in the numbered footnotes.

(6) Includes $108,248 from Platte County.

(7) Includes $291,556 from Goshen County.

(8) Includes $541,651 from Goshen County.

(9) Includes $70,191 from Goshen County.

TABLE NO. 3

Page 2

1978 PROPERTY VALUATIONS BY COUNTY AND SCHOOL DISTRICT

COUNTY District	1978 County Valuation	1978 District Valuation	1977-78 ADM	Valuation Per ADM
SHERIDAN	$ 84,730,942			
1 Ranchester		$ 9,960,985	716	$ 13,912
2 Sheridan		70,612,045	3,536	19,969
3 Clearmont		4,157,912	147	28,285
SUBLETTE	78,299,489			
1 Pinedale		38,334,252	539	71,121
9 Big Piney		50,508,346 (10)	574	87,994
SWEETWATER*	553,059,403			
1 Rock Springs		371,282,274	4,784	77,609
2 Green River		154,648,106	3,030	51,039
TETON	37,302,634			
1 Jackson		37,302,634	1,549	24,082
UINTA	38,607,317			
1 Evanston		23,812,508	1,178	20,214
4 Mountain View		7,131,427	614	11,615
6 Lyman		7,663,382	686	11,171
WASHAKIE	42,202,035			
1 Worland		35,859,011	1,844	[illegible]
2 Ten Sleep		6,343,024	197	32,198
WESTON	50,291,917			
1 Newcastle		34,400,178	1,279	26,896
7 Upton		15,891,739	439	36,200
STATE TOTALS	$ 3,251,778,281	$ 3,251,778,281	91,825	$ 35,413

(10) Includes $10,543,109 from Lincoln County.

TABLE NO. 3
Page 3

As will be noted, the assessed valuation per student in school districts varies from $209,543 to $10,899, (School Districts 27 and 38, Fremont County, were excluded from consideration because of unaccounted contributions from the tribes and Bureau of Indian Affairs)-- a ratio of over 21 to 1. The state average is $35,399 per student.

The state's foundation program does not adequately equalize the amounts available to Wyoming districts. As indicated in Table 2, supra, all school districts, with few exceptions, are receiving the maximum taxes that can be realized from authorized levies, other than from the general county levy. Even so, the statistics revealed by Statistical Report Series Nos. 1 (pages 1, 2, and 3 (Table 3)) and 3, Wyoming Public Schools Fund Accounting and Reporting, 1977-78, State Department of Education, pages 8 and 9, attached as Appendix A, the poor districts show a consistent pattern of less total revenue per student than the rich districts based on assessed valuation per student. For example, using the school district parties to this action:

District	Assessed Value Per Student	Total Revenue Per Student
Plaintiffs		
Washakie No. 1	$19,446	$1,610
Uinta No. 6	11,171	1,770
Fremont No. 25	21,501	1,697
Defendants		
Park No. 16	209,543	4,326
Campbell No. 1	108,438	3,299
Converse No. 1	83,190	2,845
Hot Springs No. 1	91,014	3,033
Carbon No. 2	79,469	2,609
Sublette No. 9	87,994	3,099
Sweetwater, No. 1	77,609	2,502
Lincoln No. 1	74,022	2,303

The foregoing are impressive but the complete tabulation for all counties and districts shows that the property-richer school districts uniformly have more revenue per student that the property-poorer ones:

COUNTY	District	Assessed Val. Per Pupil 21/	Total Revenue 22/ $/ADM	Total ADM 23/
ALBANY				
	1 Laramie	$ 17,525	$1,749	$ 4,041
BIG HORN				
	1 Byron	42,538	2,677	720
	2 Lovell	44,885	1,864	814
	3 Greybull	31,077	1,926	703
	4 Basin	29,609	2,248	540
CAMPBELL				
	1 Gillette	108,438	3,299	4,558
CARBON				
	1 Rawlins	46,595	1,841	2,692
	2 Saratoga	79,469	2,609	1,668
CONVERSE				
	1 Douglas	83,190	2,845	1,853
	2 Glenrock	61,741	2,249	900
CROOK				
	1 Sundance	35,331	2,146	1,331
FREMONT				
	1 Lander Elem.	46,057	1,487	1,438
	2 Dubois	22,689	2,002	377
	6 Pavillion	36,327	2,436	493
	9 Jeffrey City	37,540	1,545	356
	14 Ethete	13,070	3,126	354
	21 Ft. Washakie	36,567	3,070	267
	24 Shoshoni	80,738	2,146	404
	25 Riverton	21,501	1,697	3,048
	27 Hudson	7,944	1,721	94
	38 Arapahoe	3,469	3,844	237
	Lander Valley HS	102,191	2,621	927
GOSHEN				
	1 Torrington	14,078	2,098	2,597

21/ Figures derived from State Department of Education, Statistical Report Series, No. 1, 1978 School District Property Valuations, Mill Levies and Bonded Debt, pp. 6-8. Table 3.

22/ Figures derived from State Department of Education, Statistical Report Series, No. 3, Wyoming Public Schools Fund Accounting and Reporting 1977-78, pp. 8-9. Appendix A to this opinion.

23/ Figures derived from Table 3.

COUNTY District	Assessed Val. Per Pupil	Total Revenue $/ADM	Total ADM
HOT SPRINGS			
1 Thermopolis	91,014	3,033	1,019
JOHNSON			
1 Buffalo	40,537	2,113	1,401
LARAMIE			
1 Cheyenne	10,899	1,583	13,217
2 Pine Bluffs	27,358	2,642	791
LINCOLN			
1 Kemmerer	74,022	2,303	912
2 Afton	25,571	1,780	1,908
NATRONA			
1 Casper	15,747	1,484	13,871
NIOBRARA			
1 Lusk	36,027	2,124	637
PARK			
1 Powell	33,536	1,759	1,934
6 Cody	38,464	1,837	2,333
16 Meeteetse	209,543	4,326	224
PLATTE			
1 Wheatland	35,489	1,703	1,684
2 Guernsey	21,969	2,037	370
SHERIDAN			
1 Ranchester	13,912	2,122	716
2 Sheridan	19,969	2,037	370
3 Clearmont	28,285	2,415	147

COUNTY District	Assessed Val. Per Pupil	Total Revenue $/ADM	Total ADM
SUBLETTE			
1 Pinedale	71,121	2,560	539
9 Big Piney	87,994	3,099	574
SWEETWATER			
1 Rock Springs	77,609	2,502	4,784
2 Green River	51,039	2,183	3,030
TETON			
1 Jackson	24,082	1,756	1,549
UINTA			
1 Evanston	20,214	1,598	1,178
4 Mountain View	11,615	1,714	614
6 Lyman	11,171	1,770	686
WASHAKIE			
1 Worland	19,446	1,610	1,844
2 Ten Sleep	32,198	2,271	197
WESTON			
1 Newcastle	26,896	1,665	1,279
7 Upton	36,200	2,082	439

The column entitled State Revenue shown in Appendix A to this opinion includes not only the Foundation Fund distribution but also money from the land income fund which all districts received as a flat grant per student, Taylor Grazing money and other miscellaneous state money in relatively minor amounts. See Table 1. The income from sources other than Foundation Funds decreases the impact of foundation grants in equalizing school district revenue and exacerbates the disparity.

It is realized that there are variations which can be partially explained but the net result cannot be justified. See Table 1 for the several factors which can affect the amount of money received by each school district in each county. Some of the revenue of the poorer counties, as shown in Appendix A, includes large blocks of federal money which brings up their revenue per student. If we multiply the differences per student by the total students affected, the figures more forcefully demonstrate the disparity. For example, for each 100 students in Washakie District No. 1, $161,000 for their education is available. In Converse District No. 1, $284,500 for the same number is available; in Campbell District No. 1, $329,900 is available.

These disparities demonstrated throughout by the various statistical tables can lead to but one conclusion: the quality of a child's education in Wyoming, measured in terms of dollars available for that purpose, is dependent upon the property tax resources of his school district. The right to an education cannot constitutionally be conditioned on wealth in that such a measure does not afford equal protection. Serrano v. Priest, 1971, 5 Cal.3d 584, 96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R. 3d 1187; Serrano v. Priest, 1976, 18 Cal.3d 728, 135 Cal. Rptr, 345, 557 P.2d 929; Horton v. Meskill, 1977, 172 Conn. 615, 376 A. 2d 359. Those courts have approached the problem through the equal protection provisions of their various state constitutions and opened the door to school finance reform. See

also, Robinson v. Cahill, 1972, 118 N.J. Super. 223, 287 A. 2d 187, as modified, 1973, 67 N.J. 473, 303 A. 2d 273, reaching the same result through a different constitutional guarantee similar to Sec. 9, Art. VII, Wyoming Constitution, supra. We recognize that there are decisions to the contrary, but we reject them.

Section 34, Art. I, Wyoming Constitution provides that "All laws of a general nature shall have a uniform operation." This provision is nearly identical to Sec. 16, Art. 4, of the California Constitution, which reads, "All laws of a general nature have uniform operation." This court has held that provision to be the equivalent of the "equal protection" words of the Fourteenth Amendment to the Constitution of the United States. A state may enlarge rights under the Fourteenth Amendment announced by the Supreme Court of the United States, which are considered minimal, and thus a state constitutional provision may be more demanding than the equivalent federal constitutional provision. Nehring v. Russell, Wyo. 1978, 582 P.2d 67. When the California Supreme Court first held a system of school financing, similar to that of Wyoming, violative of the Fourteenth Amendment to the United States Constitution, it also oserved that California's constitutional provisions afforded the same right. It found that such a system makes the quality of a child's education dependent upon the resources of his school district and held that the right to an education in public schools cannot be conditioned on wealth because it denies equal protection. Serrano v. Priest, 1976, supra. Reinforcing the equal protection requirements of Sec. 34, Art. I, Wyoming Constitution, is

the duty imposed upon the legislature by Sec. 1, Art. VII, Wyoming Constitution, to "* * * provide a complete and uniform system of public instruction * * *," which words are compatible with and of the same tenor an the language "All laws of a general nature shall have a uniform operation." Equal protection is thereby projected from general to specific application to the school system of the state.

In a later decision, following remand and return to the California Supreme Court, Serrano v. Priest, 1976, reh.den. and modified, 1977, 18 Cal. 3d 728, 135 Cal.Rptr. 345, 557, P.2d 929, the court abandoned the Fourteenth Amendment concept because of the San Antonio School District v. Rodriquez, supra, decision of the United States Supreme Court which held that the right to education was not explicitly guaranteed by the Constitution of the United States. The California court, however, did hold the California system unconstitutional under the equal protection clauses of the California Constitution, which are similar to those we have in Wyoming.

The trial which followed Serrano I apparently developed nothing which altered the inherent defects in the California system and even after extensive tinkering by the California Legislature. Just as much can be developed from statistics of which we take judicial notice. The whole matter is one of financing explicitly provided for by constitutional language and implementing statutory language. The system is plainly illustrated by the materials of which we have taken judicial notice. The California court in Serrano II

reverted to its opinion in Serrano I which was decided without the benefit of a trial. No trial is necessary in this case because, as a matter of law, the statutory structure is inherently defective and the now obvious disparities demand that the system's constitutional infirmities be remedied.

The reasoning which we approve of and which we have applied to the instant case involves two different tests which are designed to determine if statutory classifications meet equal protection requirements. The first test is employed where the interest affected is an ordinary one and the second where fundamental interests are at issue. When an ordinary interest is involved, then a court merely examines to determine whether there is a rational relationship between a classification made by the statute or statutes being viewed and a legitimate state objective. When a fundamental interest is affected or if a classification is inherently suspect, then the classification must be subjected to strict scrutiny to determine if it is necessary to achieve a compelling state interest. In addition, this test requires that the state establish that there is no less onerous alternative by which its objective may be achieved. Horton v. Meskill, supra.24/

24/ The test is discussed in VIII Land and Water Law Review 273, a note by Stephen A. Bartholow, entitled "Equal Protection and the Financing of Public Education in Wyoming." See also, State, ex rel. Mansfield v. State Board of Law Examiners, Wyo. 1979, 601 P.2d 174.

In the light of the emphasis which the Wyoming Constitution places on education, there is no room for any conclusion but that education for the children of Wyoming is a matter of fundamental interest. In addition to the Wyoming constitutional provisions we have cited and specifically applied in this opinion, there are two others of a general nature: Sec. 23, Art. I, 25/ and Sec. 28, Art. XXI 26/ which reemphasize the fundamental importance placed on education by the founders of our state. A favorite expression referred to by other state courts to emphasize the basic importance of education is found in Brown v. Board of Education of Topeka, 1954, 347 U.S. 483, 493, 74 S.Ct. 686, 691, 98 L.Ed. 873, 880, 38 A.L.R.2d 1180:

> "Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both

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25/ Section 23, Art. I, Wyoming Constitution:

> "The right of the citizens to opportunities for education should have practical recognition. The legislature shall suitably encourage means and agencies calculated to advance the sciences and liberal arts."

26/ Section 28, Art. XXI, Wyoming Constitution:

> "The legislature shall make laws for the establishment and maintenance of

> demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms."

A classification on the basis of wealth is considered suspect, especially when applied to fundamental interests. Harper v. Virginia Board of Elections, 1966, 383 U.S. 663, 668, 670, 86 S.Ct. 1079, 1082-1083, 16 L.Ed.2d 169, 173, 174-175; Serrano v. Priest, 1971, supra. The need for a foundation program and the fact that, as presently employed due to lack of funds, it falls far short of

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> systems of public schools which shall be open to all the children of the state and free from sectarian control."

raising the level of poor counties to that of rich counties, clearly indicates that funds are distributed upon the basis of wealth or lack of it. The classification is therefore suspect. The respective tax bases of the school districts of this state and their per-student resources reflect discordant correlations which plainly demonstrate the failure of the current system to provide equal educational opportunity.

The burden is therefore on those defending the classification once its unequal results are known. As nearly as we can determine from the brief of the appellees, their position is principally, if not solely, that the school finance system of Wyoming children and that financial status is "only one small part in determining the quality of education Wyoming children receive." However, the proposition is unsupported by any convincing argument or authority. While we would agree that there are factors other than money involved in imparting education, those factors are not easy of measurement and comparison. There is some general disagreement over the degree to which money counts. However, the legislature has here set up a system which fosters and predetermines great disparities in spending. It would be unacceptable logic to deduce that the wealth counties are squandering their money merely from the fact the poorer counties are getting along just fine and providing an adequate education on the lesser amounts per child they have. For the state and the wealthy districts to put forth the assertion that money is not everything is making just such an argument. Money for school district operations, except for the

foundation fund operation and perhaps some federal funds, is not distributed upon the basis of need for quality education. Equality of dollar input is manageable. There is no other viable criterion or test that the appellees show to exist, and our exploration of the subject has resulted only in discovery of a quagmire of speculation, so slippery that it evades any secure grasp for judicial decision making. It is nothing more than an illusion to believe that the extensive disparity in financial resources does not relate directly to quality of education.

It is our view that until equality of financing is achieved, there is no practicable method of achieving equality of quality. To decide otherwise only places the whole question, as observed by the trial judge, in a posture of delay and further expensive litigation of questionable value. There has already been too much litigation to decide questions, the ultimate answers to which have for years been suspected, recognized by the legislature, noticed by this court before, and which now are obvious. Litigation had been spawned in attempts to sieze additional property for taxing purposes, as was the case in Hinkle. The Fremont County attempt to reorganize has been a hotbed of dissention for ten years and only last year was resolved, at least on the local level. See Geraud v. Schrader, Wyo. 1975, 531 P.2d 872, cert.den.sub nom, Wind River Indian Education Assoc., Inc. v. Ward, 423 U.S. 904, 96 S.Ct. 205, 46 L.Ed.2d 134. Boundary disputes incessantly flare up. See most recently, Yates v. State Committee on School District

Organization, Wyo. 1979, 598 P.2d 11. Legal battles continue, initiated by those that have not, to invade the territory of school districts that have. Ramparts of litigation are erected in defense. Litigation more often than not worsens the problem when it is not reaching the roots of the evil. Only a temporary truce results. Continual gerrymandering, in an attempt to equalize, was never a solution, and what little good may have been achieved by it in the past, serves only to reemphasize the everdeepening chasms of disparity that exist now.

The cases we cite make it clear that the state has the burden of demonstrating a compelling interest of its own which is served by the challenged legislation and which cannot be satisfied by any other convenient legal structure. The state has failed to make any showing that other methods are not available or possible. We are satisfied that the Wyoming Constitution, even as it presently stands, leaves plenty of room for the creation of equality in financing.

We are not attempting to isolate any particular statute as unconstitutional because it denies equal protection but we examine the entire system from organization of school districts through tax bases and levies and distribution of foundation funds, all of which have a bearing upon the disparity which exists. If we were to focus upon any particular statute, highly suspect is Sec. 21-13-101, W.S.1977. It has no specific constitutional permission or limitation which authorizes the levy of 25 mills with an override of 3 mills if approved by the

voters voting on the proposition, as a special school district tax. This single tax is greater than the sum of the 6 mills state tax (Sec. 15, Art. XV), 12 mills mandatory county tax for support of public schools (Sec 17, Art XV), and up to 3 mills from the general county tax (Sec. 5, Art. XV as limited by Secs. 21-12-202 through 21-13-205, W.S.1977), total, 21 mills. We do not look at the special school district tax from the point of view that a special school district tax cannot be authorized and levied. That a 25 mill special school district levy is unconstitutional has not been argued by any party to this case, It is that tax, however, which creates an opportunity for some school districts to have greater financial resources for all school purposes including capital school building construction than do others. We would suggest an investigation of the feasibility, without leaving the impression of our advance approval--which we cannot give--of a special school district tax levied throughout the state in each county and paid into a state foundation fund, or something similar, for distribution under a legislative formula on an equitable basis throughout the state.

With rare exception, all school districts request a levy of the 25 mill district tax from the richest to the poorest: Park County No. 16, Meeteetse, with a 1978 assessed value per student of $209,543, to Uinta County No. 6, Lyman, an assessed value per student of $11,171. See applicable chart. As also said in Serrano I, 487 P.2d at 1252, the commercial and industrial property which augments a district's tax base is distributed unevenly throughout the state.

To allot more educational dollars to the children of one district than to those of another merely because of the fortuitous presence of such property is to make the quality of a child's education dependent upon the location of private, commercial, industrial, and mineral establishments--an irrelevant measure for purposes of school financing. The Foundation Fund is distributed upon the basis of need to meet local requirements according to uniform measurements, all dealing in money as a measure. Tax money collected locally is not based on need having anything to do with quality of education, but is received solely on the arbitrary standard of assessed valuation. It is primarily the uncontrollable, locally collected tax money which defeats the balancing effect intended as a function of the Foundation Fund.

With amendment of Sec. 8, Art. VII, Wyoming Constitution, supra permanent land income from school lands is now available for equitable distribution, though the legislature at its last session retained the flat grant concept as provided in the same section before amendment. There appears to be no recognition given the constitutional amendment, but by Sec. 1, ch. 75, Session Laws of Wyoming, 1979, the legislature changed Sec. 21-13-301, W.S. 1977, from distribution "pro rata among the several counties of the state according to the number of children of school age in each as determined by reference to the last preceding annual school enumeration" to "pro rata among the several counties of the state according to the number of children of

school age in each as determined by the average daily membership of the school districts within each county for the preceding school year." Use of the ADM formula only averages pupils present and absent to determine the number of pupils for computation purposes. We suspect the land income distribution just described, as contributing to the unconstitutional aspects of the legislative scheme of school financing.

In the many cases decided on the subject are references to in-depth scholarly studies made on the subject of school financing, particularly the Serrano cases, supra, and the United States Supreme Court case of San Antonio School District v. Rodriquez, supra. See also, Anno., "Validity of Basing Public School Financing System on Local Property Taxes." 41 A.L.R.3d 1220 and pocket parts. Legislative committees would certainly have those available. Everything from the abolition of local school districts and placing all school administration on a statewide basis, to dividing the state into a few multi-county districts, to making all mineral, commercial and industrial property in the state subject to a state tax for school purposes have been suggested, but we make no recommendations in that regard. Reorganization of school districts within counties for greater parity appears as an option in one study, but Wyoming has tried that with the Wyoming School District Organization Law of 1969, supra. It was probably effective to a degree for counties, but statewide disparity remains. Amendment of the Wyoming Constitution may be part of a selected course, after all legislative efforts

under current constitutional provisions fail to bring maximum equality.

We only express the constitutional standard and hold that whatever system is adopted by the legislature, it must not create a level of spending which is a function of wealth other than the wealth of the state as a whole. There are alternatives and combinations of alternatives suggested by the many comprehensive reference works alluded to. The ultimate solutions must be shaped by the legislature. The assignment has complexities but is not insoluble.

So that there may be no question about this, we wish to make clear that we are not suggesting that each school district receive exactly the same number of dollars per pupil as every other school district. We understand that there are special problems and amounts may be distributed in a mode similar to the foundation fund which takes into consideration various balancing factors. A state formula can be devised which will weight the calculation to compensate for special needs--educational cost differentials. We do not purport to exhaustedly list the factors of methodology that should be employed. We only proscribe any system which makes the quality of a child's education a function of district wealth. We hold that exact or absolute equality is not required. There must be allowance for variances in individuals, groups, and local conditions. All precedents are in accord on this proposition. In fact, a flat rate per student distribution of available resources may generate a constitutionally offensive classification, particularly

in the light of those presently existing constitutional provisions such as Sec. 17, Art. XV. which mandates the levy of a particular number of mills, 12, and Sec. 5, Art. VII, which seems to require payment of fines and penalties to the county where collected and distributed to the school districts therein. By reason of the location of interstate highways, abutting counties may have an advantage. It is noted on Table 1 that in 1978, $2,397,864 in fines and forfeitures statewide were collected. We were unable to locate a report, of which we can take judicial notice, that would disclose how those are distributed. Certain federal funds may be frozen into particular areas. These matters are discussed only as a caveat that there may be inequity created by flat grants.

We see no reason to give particular attention to the question of finances for the physical facilities with which to carry on the process of education. It is a part of the total educational package and tarred with the same brush of disparate tax resources. The only constitutional limitation with respect to school buildings is found in Sec. 5, Art. XVI, Wyoming Constitution, wherein it is provided that "No school district shall in any manner create any indebtedness exceeding ten percent (10%) on the assessed value of the taxable property therein for the purpose of acquiring land, erection, enlarging and equipping of school buildings." There is no constitutional requirement that school buildings must be built by creation of debt. There are other areas of consideration, for example, a statewide reserve fund for building construction. The point is that statewide

availability from total state resources for building construction or contribution to school buildings on a parity for all school districts is required just as for other elements of the educational process. The legislature has worked in that direction. See Secs. 21-15-101, et seq., W.S.1977, providing for school district capital construction entitlements. It is noticed that Sec. 1, Art. VII, Wyoming Constitution, embraces "free elementary schools of every needed kind and grade" with a "university" and other necessary institutions to carry on "the establishment * * * of a complete and uniform system of public instruction." An examination of past appropriations of funds for the University of Wyoming includes building construction. Compare Secs. 15 and 16, Art. VII, Wyoming Constitution pertaining to the University of Wyoming, with those pertaining to elementary schools.

We have pointed up various potential solutions in this opinion only for the purpose of opening up areas of exploration for the legislature and not to specify any particular course. The goal in any case is to arrive at financial parity. It is realized that the presently existing body of statutory and constitutional law has been developed as a result of legislative action over the course of our statehood in an effort to keep pace with changing social and economic conditions. The legislature has made valiant and sincere efforts to arrange the financing of an adequate school program, using a combination of local and state funds. It has only been since 1971 that a successful attack has won in the courts so that an enlightened course of

reasoning is available to guide reform from an inequitable disparity in spendable funds for education which has relied too long and too heavily on the local property tax. As one legal philosopher has put it, the rule has always been present but has only lately been discovered. It will not be an easy task. It will require time for adequate study, drafting of appropriate legislation and transition from the present scheme of financing to one in conformity with the sense of this decision; so this court will provide a period of time in which to convert to constitutional compliance. We consider and order that the conversion be in effect and underway not later than July 1, 1982.

Reversed and remanded to the district court with directions to vacate its order of dismissal, enter judgment consistent with this opinion and retain jurisdiction until a constitutional body of legislation is enacted and in effect, taking such action as may be necessary to assure conformity.

GENERAL FUND REVENUES PER ADM BY SOURCE 1977-78

District Location	Local Revenue	Local $/ADM	County Revenue	County $/ADM	State Revenue	State $/ADM	Federal Revenue	Federal $/ADM	Total Revenue	Total Revenue $/ADM
ALBANY										
1 Laramie	$ 2,086,435	$ 516	$ 1,215,626	$ 301	$ 3,716,976	$ 920	$ 50,446	$ 12	$ 7,069,483	$1,749
BIG HORN										
1 Byron	916,088	1,272	389,072	540	621,843	864	716	1	1,927,718	2,677
2 Lovell	939,709	1,154	264,378	325	312,024	383	1,281	2	1,517,393	1,864
3 Greybull	530,430	755	284,704	405	539,035	767	-	-	1,354,168	1,926
4 Basin	581,508	1,077	234,375	434	398,006	737	-	-	1,213,889	2,248
CAMPBELL										
1 Gillette	9,558,603	2,097	4,786,820	1,050	689,657	151	-	-	15,035,080	3,299
CARBON										
1 Rawlins	2,992,771	1,112	1,559,865	579	366,022	136	38,049	14	4,956,707	1,841
2 Saratoga	2,608,456	1,564	1,198,528	719	198,959	119	345,467	207	4,351,410	2,609
CONVERSE										
1 Douglas	3,479,815	1,878	1,542,029	832	250,459	135	-	-	5,272,303	2,845
2 Glenrock	1,106,705	1,230	803,246	892	114,058	127	-	-	2,024,008	2,249
CROOK										
1 Sundance	1,419,343	1,066	757,972	569	670,046	503	8,770	7	2,856,131	2,146
FREMONT										
2 Dubois	225,089	597	135,834	360	367,722	975	25,989	69	754,635	2,002
6 Pavillion	435,393	883	206,258	418	441,713	896	117,621	239	1,200,984	2,436
24 Shoshoni	375,245	929	140,881	349	336,232	832	14,467	36	866,825	2,146
25 Riverton	1,713,070	562	949,100	311	2,508,985	823	-	-	5,171,155	1,697
GOSHEN										
1 Torrington	1,379,489	531	685,726	264	3,372,833	1,299	9,522	4	5,447,570	2,098
HOT SPRINGS										
1 Thermopolis	1,602,776	1,573	1,150,237	1,129	156,771	154	180,822	177	3,090,605	3,033
JOHNSON										
1 Buffalo	1,675,541	1,196	839,738	599	445,682	318	-	-	2,960,961	2,113
LARAMIE										
1 Cheyenne	4,102,340	310	2,601,227	197	12,828,625	971	1,385,372	105	20,918,064	1,583
2 Pine Bluffs	591,031	747	254,816	322	1,234,706	1,561	9,568	12	2,090,122	2,642
LINCOLN										
1 Kemmerer	1,404,615	1,540	568,932	624	114,885	126	11,641	13	2,100,072	2,303
2 Afton	1,688,308	885	1,015,388	532	663,401	348	29,104	15	3,396,202	1,780
NATRONA										
1 Casper	6,354,738	458	3,452,345	249	10,619,227	766	159,613	12	20,585,924	1,484
NIOBRARA										
1 Lusk	698,495	1,097	361,234	567	292,948	460	-	-	1,352,677	2,124
PARK										
1 Powell	1,809,543	936	1,279,692	662	310,522	161	1,892	1	3,401,648	1,759

GENERAL FUND REVENUES PER ADM BY SOURCE 1977-78

District Location	Local Revenue	Local $/ADM	County Revenue	County $/ADM	State Revenue	State $/ADM	Federal Revenue	Federal $/ADM	Total Revenue	Total Revenue $/ADM
6 Cody	$ 2,483,554	$1,065	$ 1,482,123	$ 635	$ 320,817	$ 138	$ -	$ -	$ 4,286,494	$1,837
16 Meeteetse	715,299	3,193	220,687	985	32,031	143	983	4	968,999	4,326
PLATTE										
1 Wheatland	976,887	580	564,509	335	1,318,572	783	8,373	5	2,868,341	1,703
2 Guernsey	242,477	655	149,351	404	361,696	978	-	-	753,524	2,037
SHERIDAN										
1 Ranchester	389,578	544	229,851	321	887,511	1,240	12,337	17	1,519,277	2,122
2 Sheridan	1,338,596	379	723,341	205	3,060,895	866	88,440	25	5,211,273	1,474
3 Clearmont	124,681	848	50,197	341	180,166	1,226	-	-	355,044	2,415
SUBLETTE										
1 Pinedale	844,785	1,567	446,584	829	70,186	130	18,193	34	1,379,748	2,560
9 Big Piney	1,094,001	1,906	489,978	854	76,064	133	118,979	207	1,779,021	3,099
SWEETWATER										
1 Rock Springs	7,319,920	1,530	3,886,101	812	679,155	142	86,634	18	11,971,810	2,502
2 Green River	3,635,714	1,200	2,432,863	803	306,790	101	238,737	79	6,614,104	2,183
TETON										
1 Jackson	1,058,288	683	683,710	441	919,013	593	59,727	39	2,720,737	1,756
UINTA										
1 Evanston	535,439	455	237,541	202	1,109,257	942	-	-	1,882,237	1,598
4 Mountain View	206,650	337	124,741	203	679,211	1,106	41,766	68	1,052,368	1,714
6 Lyman	242,223	353	143,257	209	776,920	1,133	52,092	76	1,214,491	1,770
WASHAKIE										
1 Worland	902,377	489	506,493	275	1,560,746	846	-	-	2,969,616	1,610
2 Ten Sleep	185,288	941	76,929	391	185,171	940	-	-	447,388	2,271
WESTON										
1 Newcastle	1,042,172	815	527,414	412	559,743	438	-	-	2,129,329	1,665
7 Upton	406,030	925	227,906	519	270,158	615	10,016	23	914,110	2,082
UNIFIED DIST. SUB-TOTAL	$74,019,495	$ 840	$39,881,599	$ 452	$54,925,439	$ 623	$3,127,117	$ 35	$171,953,644	$1,951
FREMONT										
1 Lander	$ 944,553	$ 657	$ 411,984	$ 286	$ 750,204	$ 522	$ 30,935	$ 22	$ 2,137,676	$1,487
9 Jeffrey City	244,729	687	72,208	203	180,912	508	52,062	146	549,910	1,545
14 Ethete	98,291	278	118,968	336	493,606	1,394	395,914	1,118	1,106,779	3,126
21 Fort Washakie	179,258	671	93,591	351	212,908	797	333,986	1,251	819,742	3,070
27 Hudson	14,923	159	31,251	332	115,610	1,230	-	-	161,804	1,721
38 Arapahoe	36,880	156	102,820	434	543,972	2,295	227,378	959	911,050	3,844
ELEMENTARY SUB-TOTAL	$ 1,518,634	$ 553	$ 830,822	$ 303	$ 2,297,232	$ 837	$1,040,275	$ 379	$ 5,686,961	$2,071
Lander Valley HS	1,118,119	1,206	366,541	395	705,016	761	240,129	259	2,429,804	2,621
GRAND TOTALS	$76,656,248	$ 835	$41,078,962	$ 447	$57,927,687	$ 631	$4,407,521	$ 48	$180,070,409	$1,961

APPENDIX B

IN THE SUPREME COURT, STATE OF WYOMING

OCTOBER TERM, A.D. 1979

FEB. 7-1980

WASHAKIE COUNTY SCHOOL DISTRICT NUMBER ONE, DONNA MOBERLY, MARY JANE SCHMELTZER, RANDALL RIDEOUT, HAROLD McDONALD, HARRY UJIFUSA, ROBERT MOODY and JAMES ARGERIS, being all of the members of THE BOARD OF TRUSTEES OF WASHAKIE COUNTY SCHOOL DISTRICT NUMBER ONE; MARY JANE SCHMELTZER as next friend for CHRISTOPHER SCHMELTZER, JOE SCHMELTZER, and FRANCES SCHMELTZER, minors; RANDALL RIDEOUT as next friend for JASON RIDEOUT, ANTHONY RIDEOUT, and MICHAEL RIDEOUT, minors; HAROLD McDONALD as next friend for KEVEN McDONALD, KEITH McDONALD, DAVID McDONALD, KENNETH McDONALD, and BRIAN McDONALD, minors, HARRY UJIFUSA as next friend for KELLY UJIFUSA and GAYLE UJIFUSA, minors; ROBERT MOODY as next friend for TODD MOODY, SHERRI MOODY, CINDY MOODY, JOHN MOODY, AL MOODY, AND SCOTT MOODY, minors; and JAMES ARGERIS as next friend for JAYME ARGERIS, TAWN ARGERIS, and BRETT ARGERIS, minors; UINTA COUNTY SCHOOL DISTRICT NUMBER SIX, G. GRANT REDDEN, CLINT WALKER, F. DANNY EYRE, DONALD R. CARROLL and CURTIS MORGAN, being all of the members of THE BOARD OF TRUSTEES OF UINTA COUNTY SCHOOL DISTRICT NUMBER SIX, FREMONT COUNTY SCHOOL DISTRICT NUMBER 25, DENNIS TIPPETS, L. J. GERAUD, PATRICIA B. FERRIS, ALICE KUCERA, STANLEY SMALLEY, and THOMAS YOUTZ, being all of the members of THE BOARD OF TRUSTEES OF FREMONT COUNTY SCHOOL DISTRICT NUMBER TWENTY FIVE, and ALBERT B. SCHULTZ,

Appellants
(Plaintiffs),

v. No. 5145

ED HERSCHLER, Governor, State of Wyoming, LYNN SIMONS, State Superintendent of Public Instruction, SHIRLEY WITTLER, Wyoming State Treasurer, JOHN PATTON, KEITH WEST, DR. DENIS LYMAN, BARBARA ROGERS, KEITH BECKER, REDELL HOOPER, KAREN HAND, DR. DONALD BLAKESLEE, GLENN ENGLEKING, being all of the members of the WYOMING STATE BOARD OF EDUCATION, PARK COUNTY SCHOOL DISTRICT NUMBER SIXTEEN, CAMPBELL COUNTY SCHOOL DISTRICT NUMBER ONE, CONVERSE COUNTY SCHOOL DISTRICT NUMBER ONE, HOT SPRINGS COUNTY SCHOOL DISTRICT NUMBER ONE, CARBON COUNTY SCHOOL DISTRICT NUMBER TWO, SUBLETTE COUNTY SCHOOL DISTRICT NUMBER NINE, SWEETWATER COUNTY SCHOOL DISTRICT NUMBER ONE, and LINCOLN COUNTY SCHOOL DISTRICT NUMBER ONE,

Appellees
(Defendants).

ORDER DENYING REHEARING AND RESPONDING TO REQUESTS FOR CLARIFICATION

The court after examination and study of the petitions for rehearing concludes:

1. The opinion and decision of the court was implicit in its language, particularly in fixing of a date for future compliance that it was prospective in operation and not intended to disturb present statutory provisions for financing of school operations, including bonded indebtedness.

2. Because of previous holdings of this court dating back to 1971 which clearly enunciated inequity in school financing, an opportunity for reform has

been available. Sweetwater County Planning Committee for Organization of School Districts v. Hinkle, Wyo. 1971, 491 P.2d 1234 and Johnson v. Schrader, Wyo. 1973, 507 P.2d 814. The court's decision herein again finds unconstitutional the state's system of school financing in failing to provide equal protection in violation of Sec. 34, Art. I, Wyoming Constitution, compatible with Sec. I, Art. VII, Wyoming Constitution, requiring a "uniform system of public instruction." Undue delay in implementing the court's decision would only be doing a disservice to the educational needs of the state with respect to financing. However, upon reconsideration, it appears advisable that the time for compliance with the court's direction be extended for a further brief period.

3. Other than a consideration of and accommodation to possible bonding impediments that are conceived to exist along with an extension of time for compliance, which will not anywise alter the thrust of the court's decision heretofore made, we find that all other questions raised by the petitions for rehearing have already been considered and resolved within the court's opinion.

It is therefore

ORDERED that the relief granted and direction of the court's opinion handed down on January 15, 1980, are prospective.

FURTHER ORDERED that the time in which to convert to constitutional compliance be, and is, extended to July 1, 1983.

FURTHER ORDERED that the school system of the state of Wyoming continue under existing statutes; and the validity and enforceability of past and future

acts, bonded indebtedness and obligations incurred under applicable statutes, as long as they are in force and effect, are assured.

FURTHER ORDERED that the judgment of the district court, made and entered on the mandate, be consistent with this order.

FINALLY ORDERED that the petitions for rehearing be and are denied, except as otherwise in this order provided.

February 7, 1980.

By the Court

JOHN F. RAPER

JOHN F. RAPER
Chief Justice

APPENDIX C

IN THE DISTRICT COURT OF HOT SPRINGS COUNTY, WYOMING

WASHAKIE COUNTY SCHOOL DISTRICT)

NUMBER ONE, ET AL,)

Plaintiffs,)

-vs- CIVIL NO. 6770)

ED HERSCHLER, ET AL,)

Defendants.)

JUDGMENT AND ORDER

This matter having come before the Court upon and after a decision of the Wyoming Supreme Court rendered on January 15, 1980, mandate having issued from that Court, IT IS, hereby, the holding and ORDER of this Court, that:

1. The Order of Dismissal entered herein on May 3, 1979, which was the subject of an appeal to the Wyoming Supreme Court, is hereby vacated.

2. The Wyoming system of financing public education is hereby declared unconstitutional, in that it fails to afford equal protection in violation of the Wyoming Constitution. The relief granted herein, and the direction of the opinion of the Wyoming Supreme Court shall be prospective.

This matter is referred to the Wyoming State Legislature for the conversion of the present system of financing public education in the State of Wyoming to a system in conformity with the Wyoming Constitution and the sense

of the decision of the Wyoming Supreme Court. It is considered and ordered that this conversion be in effect and underway not later than July 1, 1983.

4. It is FURTHER ORDERED that the school system of the State of Wyoming continue under existing statutes; and the validity and enforceability of past and future acts, bonded indebtedness and obligations incurred under applicable statutes, as long as they are in force and effect, are assured.

5. This Court shall retain jurisdiction over this cause until a constitutional body of legislation is enacted and in effect, and for the further purpose of taking such action as may be necessary to assure conformity to the decision of the Wyoming Supreme Court.

DONE this 25 day of March, 1980.

Joseph F. Maier, Judge

Joseph F. Maier, Judge

April 1, 1980
CERTIFIED A TRUE COPY

Peggy Rushin
Clerk of Court

Deputy

APPENDIX D

STATE OF WYOMING)
) SS
COUNTY OF HOT SPRINGS)

IN THE DISTRICT COURT

FIFTH JUDICIAL DISTRICT

Civil No. 6770

WASHAKIE COUNTY SCHOOL DISTRICT NUMBER ONE, et al.,

Plaintiffs,

v.

ED HERSCHLER, et al.,

Defendants.

ORDER GRANTING MOTIONS TO DISMISS

THIS MATTER HAVING COME before the Court on the motion of all Defendants to dismiss the Complaint herein and the Court having considered the memoranda of the parties in support of and in opposition to said motions, and having heard oral arguments of counsel thereon, and being fully advised in the premises;

IT IS HEREBY ORDERED that the motions to dismiss of the Defendants and each of them should be and hereby is granted, and that the Complaint in the captioned matter is hereby dismissed.

DATED this 3 day of May, 1979.

Joseph F. Maier, District Judge

APPENDIX E

IN THE SUPREME COURT

STATE OF WYOMING

WASHAKIE COUNTY SCHOOL DISTRICT NUMBER ONE, et al,	)
Appellants,	)
vs. No. 5145	)
ED HERSCHLER, et al,	)
Appellees.	)

PETITION FOR REHEARING

The Appellees, Hot Springs County School District No. 1, and Sublette County School District No. 9 petition the Court for rehearing the above entitled matter for the following reasons:

1. Appellees have been denied due process and a fair hearing.

2. A factual hearing is required to determine whether the findings of fact and conclusions of law can be supported and,

   a. Such hearing is guaranteed by the Statutes and Rules of Wyoming and required for procedural due process.

   b. If there is a justicible controversy, such hearing is required.

   c. Such hearing is required by the Declaratory Judgment Act under which this action was brought and decided.

3. The Supreme Court lacks jurisdiction to render such a decision or judgment on evidence originally introduced in the Supreme Court without offer by any party or opportunity of any party to rebut or cross examine.

4. The present decision lacks adequate standards and guidelines for compliance therewith and is indefinite and vague.

5. The constitutional questions have been decided without being fully presented and argued, in contravention of all previous decisions of this Court.

6. The decision as it now stands has effectively stopped all bonded indebtedness financing by school districts within Wyoming and has jeopardized the holders and value of all existing bond issues, thereby stopping nearly all school construction.

7. The decision as it now stands has declared unconstitutional all school tax levies and most other sources of revenue, thereby jeopardizing the continuation of all public eduction within the State of Wyoming, including even that of Appellants.

DATED this 28th day of January, 1980.

ROSS D. COPENHAVER

OF ROSS D. COPENHAVER, P.C.
Attorney for Appellees, Hot Springs County School District Number One and Sublette County School District Number Nine
Box 839, Powell, WY 82435

APPENDIX F

BRIEF OF POINTS AND AUTHORITIES

I

APPELLEES HAVE BEEN DENIED DUE PROCESS AND A FAIR HEARING.

> "Due process of law does not mean according to the whim, caprice or will of a judge. . . It means according to law. . . It shuts out all interference not according to established principles of justice, one of them being the right and opportunity for a hearing: to cross examine, to meet opposing evidence, and to oppose with evidence. . . Judicial absolutism is not a part of the American way of life. The odious doctrine that the end justifies the means does not prevail in our system for the administration of justice. The power vested in a judge is to hear and determine, not to determine without a hearing. When the constitution requires a hearing, it requires a fair one, one before a tribunal which meets established standards of procedure. . " In Re Estate of Buckman, (Cal. 1954) 267 P2d 73, 47 ALR2d 291, 306.

Although Appellee school districts are not persons for the purposes of due process of law under the Fifth Amendment, 56 L.Ed.2d 895, 901, the state is a "person" under statutory provisions. Anti-Trust Laws, 56 L.Ed2d 895, 908; Internal Revenue Code, 56 L.Ed.2d 895, 913. As used in the Statutes of the State of Wyoming, "person" includes a corporation or any other entity, public or private. W.S. 8-1-102.

Appellee school districts are each a body corporate. W.S. 21-3-101. Each of them has authority to sue and be sued. W.S. 21-3-111. This court in the instant decision has stated:

> "The school districts and the members of school boards are charged with the responsibility of providing education to the children of Wyoming and are tangibly injured if the statutes which guide their hands disenable them from so providing."

And as such Appellees have a standing and an interest in this action brought against them by the Appellants and the Statutes and Rules of Procedure of the State of Wyoming would appear to govern the rights and procedures to which these Appellees are entitled and upon which they can rely.

The statutes and rules governing this matter include:

1. The Declaratory Judgment Act gives a right to judicial determination of issues of fact. W.S. 1-37-111.
2. The order of trial provided by statute (and Appellees are even entitled to a jury determination of factual issues if demanded and if afforded an opportunity to make such demand) would provide an opportunity to produce evidence and to rebut the evidence of Plaintiffs (and presumably any additional evidence secured or admitted by the court). W.S. 1-11-205.
3. Appellees should have the opportunity to present their defenses and objections. WRCP, Rule 12.

4. A right to have the issues tried by the court is provided by Rule 39 WRCP.
5. The testimony of witnesses should be taken orally in open court. Rule 33, WRCP.
6. Appellees should have an opportunity to request a special findings of fact. Rule 52, WRCP.

In addition to which any litigant, including Appellees, should be afforded all of the fundamental rules of due process contemplated in common law.

The opportunity to be heard is a fundamental requisite of due process of law. 16A AmJur2d Constitutional Law, Section 827, page 1014.

Although the Supreme Court has acknowledged that a state is not a person for the purposes of due process of law of the Fifth Amendment, 16A AmJur2d Constitutional Law, Section 826, page 1010; and a political subdivision is not within the protection of the equal protection clause of the Fourteenth Amendment against an act of the State Legislature "in opposition to the will of its creator," Williams vs. Baltimore, 289 US 36, 77 L.Ed. 1015, 1020; and the Amendment does not protect the State itself, as against the acts of other states. Pennsylvania vs. New Jersey, 426 US 660, 49 L.Ed.2d 124, 129; it is respectfully submitted that the legislature having given Appellee school districts the full right to use of the courts and the procedures therein, such right "in accord with the will of its creator" cannot be denied by the courts, and such denial is a violation of equal protection under both the Fourteenth Amendment of the United

States Constitution, and Sections 8 and 34 of Article I of the Wyoming Constitution.

The procedural due process provided by the Statutes and Rules of Wyoming is substantially the same as by decision is granted to individuals under the Fourteenth Amendment. The Court in the instant decision has said that Wyoming's Constitutional provision of uniform operation of law is equivalent to equal protection and is projected to the school system of the state.

The procedural due process right of a state were specifically recognized by the court in State vs. Anderson, (Minn.) 19 NW2d 70. The statute provided for a hearing and the court, at page 74 said;

> "We now hold that such right to answer and to have a hearing at which witnesses may be examined and cross examined is the absolute right of the state."

To judge in a contested proceeding implies the hearing of evidence from both sides in open court, a comparison of the merits of the evidence, a conclusion from the evidence of where the truth lies, the application of appropriate laws to the facts found and the rendition of judgment accordingly. Manley vs. Georgia, 279 US 1, 73 L.Ed. 575, 578.

The right to present evidence is essential to the fair hearing required by the due process clause. Jenkins vs. McKeithen, 395 US 411, 23 L.Ed.2d 404, 421. Due process of law is provided when the party is given full opportunity to present the questions of law and fact in trial court with the right to reserve questions for review and have them reviewed

by the appellate courts. All this is provided for by law in an orderly administration of justice. Life and Casualty Insurance Company vs. Womack, (Ala.) 151 S. 880, 881; Minnesota vs. Sax, (Minn.) 42 NW2d 68; 18 ALR2d 929, 940.

The provision for a hearing implies the privilege of introducing evidence. Baltimore & O.R. Co. vs. U.S., 264 US 258, 256, 68 L.Ed. 667, 674.

There is no hearing in the constitutional sense where the party does not know what evidence is offered or considered and is not given an opportunity to protest, explain or refute. 16A AmJur Constitutional Law, Section 848, page 1058. The right under the Due Process Clause to a full hearing includes the right of the party whose rights are sought to be affected to introduce evidence and have judicial findings based upon it. Baltimore & O.R. Co. vs. U.S., 298 US 349, 80 L.Ed. 1209, 1224.

This Wyoming Supreme Court itself, in Holm vs. State, 404 P2d 740, 744, has stated:

> "One of the most basic elements of due process is the right of each party to be apprised of all the evidence upon which an issue is to be decide, with the right to examine, explain or rebut such evidence. . . and, the right to hear and controvert all evidence upon which a factual adjudication is to be made, includes the right to hear and cross examine witnesses."

It is an elementary principle of due process that if during a trial the court sua sponte unearths a point of law which

is deemed decisive of the case, the party against whom the decision impends has the same right to be heard before the decision as he has to produce evidence on the issues of fact, and a denial of such an opportunity deprives him of due process. Moore vs. California Mineral Products, (Cal.) 252 P2d 1005, 1007. The exclusion of competent and relevant evidence on the ground that the trial court was in possession of the evidence although it was not in the record is not due process. Minnesota vs. Sax, 42 NW2d 680, 18 ALR2d 929, 940.

Even in proceedings before administrative agencies, the Due Process Clause forbids an agency to use evidence in a way that forecloses an opportunity to offer a contrary presentation. 16A AmJur2d Constitutional Law, Section 848, pages 1061 and 1062.

The right to confront and cross examine witnesses is a fundamental aspect of procedural due process and such right applies not only in criminal proceedings, but also in noncriminal proceedings, including administrative or quasi judicial proceedings. Jenkins vs. McKeith, 395 US 411, 23 L.Ed.2d 404, 421; Willner vs. Committee on Character and Fitness, 373 US 96, 10 L.Ed.2d 224; Wolff vs. McDonnell, 418 US 539, 41 L.Ed.2d 935.

In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross examine adverse witnesses. Goldberg vs. Kelley, 397 US 254, 25 L.Ed.2d 287, 300. Denial of the right to challenge matters set forth in affidavits was denial of trial of issues and procedural due process was lacking.

Collins vs. Superior Court of Los Angeles County, (Cal.) 310 P2d 103, 109-110.

II

A FACTUAL HEARING IS REQUIRED TO DETERMINE WHETHER THE FINDINGS OF FACT AND CONCLUSIONS OF THE COURT CAN BE SUPPORTED.

1. A factual hearing is guaranteed to appellees by the Statutes and Rules of Wyoming hereinabove identified and is required by procedural due process as hereinabove outlined.

2. If there is a justicible controversy, a factual hearing is required.

This Court in the instant decision in determining that the Appellants had a standing to sue, declared that the Appellants had a stake in an "otherwise justicible controversy" and that such standing was the concept used to insure "that a justicible controversy is presented to the court." (Emphasis added).

The court conceded that there must be a justicible controversy and found each of the qualifications for a justicible controversy to be met. The criteria previously set forth in Brimmer vs. Thompson, (Wyo. 1974), 521 P2d 574, 578, were reiterated. Such criteria again cited, approved and adopted by the court includes the following with emphasis added:

> "Finally, the proceedings must be genuinely adversary in character and not a mere disputation, but advanced with sufficient militancy to engender a thorough research and analysis of the major issue."

This is consistent with previous decisions of this court that the court will not entertain jurisdiction unless a controversy exists and there are parties opposing each other therein. All of which contemplates, and emphasizes the importance previously attached by the court to, a full and thorough presentation of issues of fact both sides of the controversy.

Yet, the parties in this matter have not yet been permitted to present their controversy in a "genuinely adversary" manner or "with sufficient military to engender a thorough research and analysis of the major issues."

3. A factual hearing is required by the Declaratory Judgment Act.

> "When a declaratory judgment proceeding involves the determination of an issue of fact, the issue may be tried and determined as in other civil actions." W.S. 1-37-111.

Appellees are not only entitled to a judicial determination of issues of fact, but are entitled to a determination by a jury if they should elect. Holly Sugar Corp. vs. Fritzler, 42 Wyo 446, 474, 296 P. 206.

The Wyoming Court in the Holly Sugar case also indicated that the courts ordinarily will not entertain jurisdiction unless a bona fide controversy exists and there are parties opposing each other therein. Holly Sugar Corp. vs. Fritzler, Supra, page 463.

4. There are issues issues of fact and conclusions found or assumed by the court which are not supported by evidence.

Attached hereto as Exhibit "A" is an Affidavit with Exhibits attached, executed by George W. Cassell, Superintendent of Hot Springs County School District No. 1. The Affidavit and the Exhibits attached hereto clearly show and illustrate that the educational program offered by Appellants, Washakie County School District No. 1 and Fremont County School District No. 25, and also that offered by Natrona County School District No. 1, which has heretofore been designated a "poor" district by the court are in each instance greater and broader than the course offerings which can be offered to their students by Appellee, Hot Springs County School District No. 1, and by the "richest" school district, Park County School District No. 16.

There is no evidence to show or substantiate any assumed correlation or relative relationship between educational offering and wealth (as measured by assessed valuation per pupil).

It is a non-sequitur, to assume that because there is not a relatively uniform amount of money on an annual per pupil basis that there is not an equal educational opportunity; particularly when this court itself recognizes that "More money may be needed in one school district to achieve quality education than in another because of . . ." enumerating various differentiating factors.

Although the Wyoming Constitution may provide:

> "No tax shall be imposed without the consent of the people or their authorized representatives. All taxation shall be equal and uniform." Article I, Sec. 28, Wyoming Constitution.

This clause has always been construed by this court to apply only to the assessment and levy of a tax upon the property of the subdivision which makes the levy. Nowhere is there previous authority or evidence that it was the intent or desire of the framers of this constitution that the "proceeds" or funds derived from the tax must be distributed or "equally divided", either within the tax levying subdivision or throughout the state. In fact, this court has heretofore said that the people of one municipality cannot be taxed for the benefit of people in another municipality. Tennant vs. Sinclair Oil & Gas Co., 355 P2d 887, 889.

The tables and information obtained and used by the court in this matter show substantial uniformity in the assessment and levy of taxes. The principle variations are the result of levies for payment of principal and interest on bond issues - and, of course, it seems illogical to expect every school district to require buildings at the same time or to issue a proportional amount of bonds whenever a debt is incurred by another school district.

There is no evidence to support the statement that:

> "All children in some districts are deprived."

nor, to show of what they are deprived.

There is no evidence to show or indicate that any portion of the system of public schools is not "thorough and

efficient."

There is no evidence to show or indicate that the system of public schools is not "adequate to the proper instruction of all youth of the state."

The court recognizes the Wyoming School Foundation Program, its equalization effort and that the fund takes into account many variables - including primarily the property tax revenues of each district. The court recognizes that there are many variables by reason of which more money may be needed in one school district than in another to achieve quality education. Yet, there is absolutely no evidence that the foundation fund does not achieve a substantially equal, quality educational program - or quality education - or thorough and efficient system - in each school district. There is only evidence to show, by the statistics secured and used by the court, that there is a different quantity of money expended by or available to the different school districts.

There is no evidence to show the results of the educational program in any school district or that there is any difference in such results as between the various school districts.

There is no evidence that the disparity in funds available under the Wyoming system of school financing results in a disparity of educational opportunity. There is no evidence that:

> "The income from sources other than foundation funds decreases the impact of foundation grants in equalizing school district revenue and exacerbates the disparity."

It is respectfully submitted that an evidential hearing would show what funds are included as "local revenue" in computing Foundation Fund entitlements.

There is no evidence from which the court can assume that the quality of a child's education must be measured solely in terms of dollars available - rather than in dollars required to obtain such quality.

There is no evidence to show that any school district does not receive the dollars required to provide a complete, uniform, thorough, efficient, adequate or quality education to its pupils.

There is no evidence, in fact, to show what is a complete, uniform, thorough, efficient, adequate or quality education, either under the provisions of the Constitution or otherwise.

There is no evidence to support the conclusion that the Foundation Program falls short of raising the level of education of any school district which the court denominates as "poor" to that of the level of the level of education of other school districts which the court calls "rich." In fact, it is respectfully submitted that the affidavit attached hereto as Exhibit "A" should clearly indicate that there is or may be substantial evidence to the contrary if such evidence will be considered.

Any classification on the basis of wealth is a classification for distribution of funds from the Foundation Program in which the "poor" districts receive the greater amount of distribution. It does not follow therefore that such classification under such circumstances can be "suspect" as labeled by

the court. In fact, the entire tenor of the court's decision is that funds must be distributed or redistributed on the basis of wealth or lack of it.

The court has said:

> "The burden is therefore on those defending the classification once its unequal results are known."

but, there is no evidence to show an "unequal result" in education. The only evidence shows that different amounts of money are available to or expended by different school districts.

The court has said the burden is on those defending. That being the case, those defending should be afforded an opportunity to defend.

The court has summarily and without evidence, rejected the proposition that finances are:

> "Only one small part in determining the quality of education Wyoming children receive."

Such rejection was made on the basis that the proposition: "is unsupported by any convincing argument or authority." None of the Appellees have been afforded any opportunity to support the proposition by evidence, argument or authority. Due process requires such opportunity.

Unless evidence is presented the contrary, it appears to be completely illogical to accept the statement that because one school district spends more money than another, it is either "squandering" its money or that a similar expenditure is required in every other school district to provide an adequate education. As hereinbefore set forth,

this court itself has recognized some of the variable. Only an evidential hearing and thorough analysis and argument, can result in sound, proper and logical conclusions.

This court has said:

> "There is no other viable criterion or test that the Appellees show to exist, and our exploration of the subject has resulted only in discovery of a quagmire of speculation, so slippery that it evades any secure grasp for judicial decision making."

Appellees have, however, been given no opportunity to show that other criteria may be valid.

There is no evidence to show or indicate or from which to conclude that:

> ". . . until equality of financing is achieved, there is no practicable method of achieving equality of quality."

There is no evidence to show or indicate what constitutes "equality of financing" other than dollars per pupil - which the court itself indicates may generate a constitutionally offensive classification.

The court has completely ignored any substantial equalizing effect of the capital construction entitlements, other than to mention that such fund exists.

III

THE SUPREME COURT LACKS JURISDICTION TO RENDER SUCH A DECISION OR JUDGMENT UPON EVIDENCE ORIGINALLY INTRODUCED IN THE SUPREME COURT WITHOUT OFFER BY ANY PARTY OR OPPORTUNITY OF ANY PARTY TO REBUT OR CROSS EXAMINE.

Unless the power or authority of a court to perform a contemplated act can be found in the constitution or the laws enacted thereunder, it is without jurisdiction and its acts are invalid. 16 AmJur2d Constitutional Law, Section 307, page 824, 825.

Courts, like other agencies of the government, are subject to controlling constitutional provisions and valid existing laws; and in performing judicial functions, courts must be careful to keep within the constitutional limits of their own powers and to proceed by due process of law. 16 AmJur2d Constitutional Law, Section 307, page 830.

> "The Supreme Court shall have general appellate jurisdiction, coextensive with the state, in both civil and criminal causes, and shall have a general superintending control over all inferior courts, under such rules and regulations as may be prescribed by law." Article V, Section 2, Wyoming Constitution.

The Supreme Court is essentially a court of review with reference to cases where original jurisdiction is lodged exclusively in a lower court and in that sense, its jurisdiction is limited and ought not to be extended beyond the limits prescribed. State vs. Kelley, 17 Wyo 335, 341, 98 P. 886.

"The district court shall have original jurisdiction of all causes, both at law and in equity. . . The district court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court;. . ." Article V. Sec. 10, Wyoming Constitution.

The provisions of the Wyoming Uniform Declaratory Judgments Act include:

"Courts of record within their respective jurisdictions may declare rights, status and other legal relations whether or nor further relief is or could be claimed. . ."

"Any person. . . whose rights, status or other legal relations are affected by the Wyoming Constitution or by a statute. . .may have any question of construction or validity arising under the instrument determined and obtain a declaration of rights, status or other legal relations." W.S. 1-37-103.

"Final orders and judgments entered in declaratory judgment proceedings may be reviewed as in other civil actions." W.S. 1-37-109

"Further relief based on a declaratory judgment may be granted. Application therefor should be by petition to a court having jurisdiction to grant the relief. If the application is sufficient, the court, on reasonable notice, shall require any adverse party whose rights have been

adjudicated by the declaratory judgment to show cause why further relief should not be granted." (Emphasis added) W.S. 1-37-110.

"When a declaratory judgment proceeding involves the determination of an issue of fact, the issue may be tried and determined as in other civil actions." W.S. 1-37-111.

The court has no power to ignore court procedure. It is an exercise of unlawful authority to ignore the well established and securely grounded processes of orderly court procedure so necessary under our system of government to secure to a litigant his day in court - due process of law. State vs. Tedder, (Fl. 1936) 166 S. 590, 595.

The trial court must determine and dispose of all factual questions before the Supreme Court should be asked to determine constitutional problems. State Ex Rel Fawcett vs. Board of County Commissioners, 73 Wyo. 69, 87, 273 P2d 188; State Ex Rel Keefe vs. Jones, 62 Wyo. 71, 161 P2d 135; White vs. Board of County Commissioners, 77 Wyo. 246, 313 P2d 484.

As hereinabove indicated, the Supreme Court does not have jurisdiction to exercise original authority, to enter any declaratory judgment, or order specifying what judgment should be entered; the court does not have jurisdiction, power, or authority to disregard court procedure, or to deny any judicial determination or trial of fact as provided by the Declaratory Judgment Act. The jurisdiction of this court itself is controlled by the Constitution. The district court has original jurisdiction and this court can exercise only appellate jurisdiction. There is no constitutional or statutory

procedure whereby the Supreme Court can deny to Appellees a judicial determination and trial of facts at the district court level.

APPENDIX G

W.S. 1-37-111. When a declaratory judgment proceeding involves the determination of an issue of fact, the issue may be tried and determined as in other civil actions.

WRCP (Wyoming Rules of Civil Procedure) Rule 12. ". . .(1) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleadings shall be served within ten (10) days after notice of the court's action; . . ." "Every defense, in law or fact, to a claim for a relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, . . . (6) failure to state a claim upon which relief can be granted, (7) failure to join the party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion.

WRCP Rule 39. ". . .(b) By the court. - Issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court;. . ."

WRCP Rule 38. "(a) Right preserved. - Issues of law must be tried by the court, unless referred as hereinafter provided; and issues of fact arising in actions for

the recovery of money only, or specific, real or personal property, shall be tried by a jury unless a jury trial be waived, or a reference be ordered. All other issues of fact shall be tried by the court, subject to its power to order any issue to be tried by a jury, or referred."

WRCP Rule 43. "(a) Form and admissibility. - In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these rules, by statute, the Wyoming Rules of Evidence, or other rules adopted by the Suprem Court of Wyoming."

WRCP Rule 52. "(a) General and special findings by court. - Upon the trial of questions of fact by the court, or with an advisory jury, it shall not be necessary for the court to state its findings, except generally for the plaintiff or defendant, unless one of the parties requests it before the introduction of any evidence, with the view of excepting to the decision of the court upon the questions of law involved in the trial, in which case the court shall state in writing its special findings of fact separately from its conclusions of law; provided, that without such request the court may make such special findings of fact and conclusions of law as it deems proper and if the same are preserved in the record either by stenographic report or by the court's written memorandum, the same may be considered on appeal. . ."

Supreme Court, U. S.
FILED
MAY 30 1980
MICHAEL RODAK, JR., CLERK

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1979

No. 79-1728

HOT SPRINGS COUNTY SCHOOL DISTRICT
NUMBER ONE, et al,
Petitioners,

vs.

WASHAKIE COUNTY SCHOOL DISTRICT
NUMBER ONE, et al,
Respondents.

Petition for Writ of Certiorari
to the Supreme Court of the
STATE OF WYOMING

BRIEF FOR RESPONDENTS
(Appellants below)
In Opposition

John W. Davis
Davis, Donnell, Worrall & Bancroft, P.C.
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(Appellants below)
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Worland, Wyoming 82401

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1951, 54 So.2d 12, 219 La. 763, Cert. den. 342 U.S. 877, 72 S.Ct. 167, 96 L.Ed. 659 11

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1728

HOT SPRINGS COUNTY SCHOOL DISTRICT NUMBER ONE, et al,

Petitioners,

vs.

WASHAKIE COUNTY SCHOOL DISTRICT NUMBER ONE, et al,

Respondents.

Petition for Writ of Certiorari to the Supreme Court of the

STATE OF WYOMING

BRIEF FOR RESPONDENTS

(Appellants below)

In Opposition

To the Honorable Court:

Come now the Respondents (Appellants below) and pursuant to the provisions of Rule 24 of the Rules of this Honorable Court, respectfully file this brief in opposition to the petition for a writ of Certiorari in this case.

QUESTIONS PRESENTED FOR REVIEW

The Respondents submit that the only questions presented for review in this case are the following:

I. WHETHER OR NOT THE PETITIONERS WERE DENIED DUE PROCESS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS WHEN THE WYOMING SUPREME COURT RESOLVED A CASE BY TAKING JUDICIAL NOTICE OF OFFICIAL STATISTICS OF THE WYOMING DEPARTMENT OF EDUCATION AND WHEN PETITIONERS (APPELLEES BELOW) DID NOT USE THE WYOMING PROCEDURES FOR CHALLENGING THE TAKING OF JUDICIAL NOTICE.

II. WHETHER OR NOT THE PETITIONERS, AS SCHOOL DISTRICTS, HAVE STANDING AS PERSONS ENTITLED TO CLAIM RIGHTS OF DUE PROCESS AND EQUAL PROTECTION UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

STATEMENT OF FACTS

This case arose upon the filing of a Complaint for Declaratory Judgment, which sought a declaration that the Wyoming system of financing public education was in violation of the Wyoming Constitution. Record on appeal in the Court below, at 3-10.

The Plaintiffs consisted of three school districts, and various people associated with these school districts. The Defendants consisted of several Wyoming officials and the eight richest school districts in the state of Wyoming. Two of these school districts, Hot Springs Number One and Sublette County Number Nine, are the Petitioners herein, and these two school districts were also the parties who petitioned the Wyoming Supreme Court for a new hearing.

When the case was filed, the Defendants immediately took action to have the case resolved without a factual hearing by moving to dismiss on points of law. Record on appeal in the Court below, at 45-88. Thereafter the trial court sought to have the factual matters resolved by stipulation as part of a certified question procedure to the Wyoming Supreme Court. Defendants resisted this, however, even when the Plaintiffs offered to stipulate to almost all of the factual material considered important by the instant Petitioners. This offer was made because such factual materials came almost entirely from official records. Record on Appeal in the Court below, at 209-246, esp. pp. 235-241.

When the Wyoming Supreme Court decided

the case, they did so by taking judicial notice of some of these official records, primarily the official statistics of the Wyoming Department of Public Education. Washakie County School District Number One v. Herschler, Wyo. 606 P.2d 310, at p. 322 and footnote 16. Based upon these, which showed huge disparities between the taxing powers of Wyoming school districts, and the monies available for the education of Wyoming's children, the Wyoming Supreme Court decided that the Wyoming system of financing public education violated Wyoming's Constitution:

> These disparities demonstrated throughout by the various statistical tables can lead to but one conclusion: the quality of a child's education in Wyoming, measured in terms of dollars available for that purpose, is dependent upon the property tax resources of his school district. The right to an education cannot constitutionally be conditioned on wealth in that such a measure does not afford equal protection. Serrano v. Priest, 1971, 5 Cal. 3d 584, 96 Cal. Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187; Serrano v. Priest, 1976, 18 Cal. 3d 728, 135 Cal. Rptr. 345,

557 P.2d 929; Horton v. Meskill, 1977, 172 Conn. 615, 376 A.2d 359.

Washakie County School District No. One v. Herschler, Id at 332.

In an earlier case, the Wyoming Supreme Court had also taken judicial notice of official statistics of the Wyoming Department of Education and had then declared that the Wyoming system of financing public education violated the Wyoming Constitution. Sweetwater County Planning Committee for Organization of School Districts v. Hinkle, 491 P.2d 1234, 1236-1237 (Wyo. 1971). The Court stated in this 1971 opinion that it expected the system to be changed; the Wyoming Legislature failed to do so, however.

In oral argument before the Wyoming Supreme Court, the question was raised as to whether or not the Court should take judicial notice of statistics from the Wyoming Department of Education, as was done in Hinkle. These respondents took the position that the Wyoming Supreme Court should do so.

The procedure regarding judicial notice is spelled out for all Wyoming Courts in the Wyoming Rules of Evidence, Rule 201. Appendix A, p. A-1. Petitioners here, after the decision of the Wyoming Supreme Court, did not make a timely request for an opportunity to

be heard "as to the propriety of taking judicial notice and the tenor of the matter noticed," which procedure is described in Rule 201. In their Petition for Rehearing before the Wyoming Supreme Court the Petitioners argued the significance and import of the matters noticed by the Wyoming Court (Appendix to Petitioners Petition for Writ of Certiorari, F-10 et seq.) and, at one point, stated that "...the Appellees hasten to assure the court that pages of statistics such as the court has developed and used in this matter, can be stipulated without hesitation whenever material or relavent (sic)", but then Petitioners argued that they would require that additional information also be stipulated. Petition for Rehearing and Brief of Points and Authority before the Wyoming Supreme Court, at 18 (Appendix B, p. B-3).

Again, however, no request to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed, as required by Rule 201 (e), was made to the Wyoming Supreme Court after their decision.

The matter of standing arose early in this case, the defendants, including the instant petitioners, saying that none of the Plaintiffs had standing to bring the action under either the Wyoming or United States

Constitution. Record on Appeal in the Court below, at 102-107. These respondent school districts, even before the Trial Court, effectively conceded the point as to school districts with respect to the United States Constitution, saying:

"Under the United States Constitution, the school districts would most probably not have standing because the protections of the 14th amendment are personal." Record on Appeal in the Court below, at 139.

Respondents did contend, of course, that the school district plaintiffs had standing under the Wyoming Constitution. Despite the strong opposition of Defendants, citing such cases as Williams v. Mayor and City Council of Baltimore, 289 U.S. 36, 53 S.Ct. 431, 77 L.Ed. 1015 (1933), the Wyoming Supreme Court ruled in favor of Plaintiff school districts on this issue, though not on the basis of the United States Constitution. Brief of Appellees, before the Wyoming Supreme Court at 24; Washakie County School District No. One v. Herschler, supra, at 317.

ARGUMENT

I. The Petitioners seem to be asserting to this Court that the mere fact that the

Wyoming Supreme Court resolved the instant case without a factual hearing violated due process requirements.

But due process does not necessitate an evidentiary hearing in all cases. U.S. v. Wood, Wire, and Metal Lathers International Union, Local Union No. 46, 471 F.2d 408 (C.A.N.Y. 1973), cert. den. 412 U.S. 939, 37 L.Ed.2d 398, 93 S.Ct. 2773 (1973). These same Petitioners vigorously fought to prevent the respondents from receiving a trial on the merits of this case, first by seeking a dismissal as a matter of law and then by frustrating a proposed certified question procedure.

The central fact of this case is that the Wyoming Supreme Court simply took judicial notice of statistics from the Wyoming Department of Education, as they may under the Wyoming Rules of Evidence, and thus supplied with facts, ruled that these facts, as a matter of law, showed that the Wyoming system of financing public education violated the Wyoming Constitution. This Court has specifically held that a court may determine the constitutional validity of statutes based upon things which may be judicially noted. Weaver v. Palmer Bros. Co., 270 U.S. 402, 46 S.Ct. 320, 70 L.Ed. 654, 656 (1926).

The Wyoming Supreme Court, in taking judicial notice of the Wyoming Department of Education statistics, followed Rule 201 of the Wyoming Rules of Evidence. This rule is identical to the judicial notice rule of the federal courts.

Further, and this is a most important point, the Petitioners did not avail themselves of the opportunities for challenging the action of the Wyoming Supreme Court in taking judicial notice of official statistics of the Wyoming Department of Education. In fact, the statements of Petitioners in the various papers they have submitted show clearly that they did not really object to these official statistics. And how could they? For what could be more reliable or more central to this school finance case than the voluminous and complete statistics of the Wyoming Department of Education showing property valuations, school tax levies, monies received, monies spent, assessed value per student, and total revenue per student for all the school districts in Wyoming? See Washakie County School District No. One v. Herschler, 606 P.2d at 325-331.

What the Petitioners have challenged is the interpretation given the statistics

by the Wyoming Supreme Court. See Petition for Rehearing and Brief of Points and Authority (before the Wyoming Supreme Court), at 8-13 (Petitioner's F-8 to F-14), 16-19 (Appendix B).

In other words, what the Petitioners are really arguing here is the application of facts to the law and the construction given several Wyoming Constitutional provisions. But the law is very clear that this is not an appropriate matter for review by this Court, that such matters are for the exclusive determination of the state court. Louisville Gas & Electric Co. v. Coleman, 277 U.S. 32, 48 S.Ct. 423, 72 L.Ed. 770, 773 (1928).

This case, therefore, does not involve a question of due process at all. We respectfully submit that the authorities submitted by Petitioners are not in point and none of them show that in our circumstances there is or may be a violation of due process. The only cited case which is even near to ours is Ohio Telegraph Co. v. Public Utilities Commission, 301 U.S. 292, 57 S.Ct. 794, 81 L.Ed. 1093 (1937). This case involved the actions of an administrative board which took judicial notice of certain secret items (They refused to divulge them and not even the

Supreme Court could learn them.) The adversely affected party protested and moved for a hearing, but, of course, since this party could not even learn the facts being used against it, it certainly couldn't contest them.

The facts of this Ohio Bell case are in stark contrast to ours. In our case, the Petitioners well knew the Wyoming Supreme Court was contemplating taking judicial notice of the same kinds of official statistics of which it had taken judicial notice in a previous case; this was raised in oral argument. Then, after the Court took judicial notice, there was no proper challenge to this action by the Petitioners. Finally, each and every fact of which the Wyoming Supreme Court took judicial notice was openly spread upon the record.

In sum, the Petitioners can point to no violation of due process by the Wyoming Supreme Court.

II. The Petitioners have asserted before this Court, contrary to their positions before the other Courts involved in this action, that the protections of the Fifth and Fourteenth Amendments are not simply personal but that the Petitioners, as public

corporations and agencies of the State of Wyoming, are entitled to claim the protections of these provisions of the United States Constitution.

That is not the rule which this Court has enunciated. Williams v. Mayor and City Council of Baltimore, supra, 77 L.Ed. at 1020.

The Williams rule has been almost universally followed and state courts have frequently cited it and adhered to it. Warren County, Miss. v. Hester, 1951, 54 So. 2d 12, 219 La. 763, cert. den. 342 U.S. 877, 72 S.Ct. 167, 96 L.Ed. 659; Mitchell v. Williamson, 304 P.2d 314 (Okl. 1956). The rule is stated in terms that the word "person" as used in the Fourteenth Amendment cannot be taken to extend to a state or political subdivision thereof. South Carolina v. Katzenbach, 383 U.S. 301, 86 S.Ct. 803, 15 L.Ed. 2d 769, 784 (1966). Warren County, Miss. v. Hester, supra. The obvious reasoning involved in these cases is that since the purpose of the Fourteenth Amendment was to protect citizens of states ("persons") against actions by the state, it doesn't make any sense to call a state a "person" and thus to extend the rule so as to protect a state (or political subdivision thereof) from itself.

This same reasoning does not apply, however, to state constitutional provisions under which state courts have ruled that school districts have standing to challenge state school financing systems. For instance, in Washington, a state in which school districts have been accorded standing under the Washington Constitution to challenge that state's system of financing public education (Seattle School District Number One of King County v. State, 585 P.2d 71, at 82 (Wash. 1978)), it has been acknowledged that school districts would not have standing under the United States Constitution. Northshore School District v. Kinnear, 84 Wash. 2d 685, 530 P.2d 178, 222 (1974) (Stafford, J., dissenting).

The instant case seems a particularly inappropriate one to alter the well-established rule regarding standing under the Fourteenth Amendment for political subdivisions of a state. This is a case in which the Wyoming Supreme Court, dealing with matters specially within the interest of citizens of the State of Wyoming, has unanimously held that Wyoming's system of financing public education is unfair to great numbers of Wyoming's children, taxpayers, and school districts. Now two very wealthy

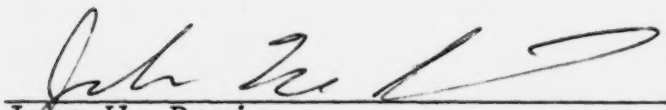
districts have come before this court seeking to preserve their privileged positions. Members of this Court, even when deciding that the federal constitution does not prohibit school financing systems such as Wyoming's, have still acknowledged the great unfairness of such systems and that actions to correct them are most appropriately within the province of the states themselves. San Antonio Independent School District v. Rodriquez, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16, 5860 (1973), (Stewart, J., concurring).

It seems best, therefore, that the State of Wyoming be allowed to resolve this matter itself.

CONCLUSION

The Wyoming Supreme Court has not violated any due process rights of the Petitioners but, in any event, the Petitioners have no standing to raise the question.

Respectfully submitted this 29th day of May, 1980.



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CERTIFICATE OF SERVICE

I hereby certify that on May 29th, 1980, three printed copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari have been served by certified mail, to the following counsel for Petitioners and Respondents:

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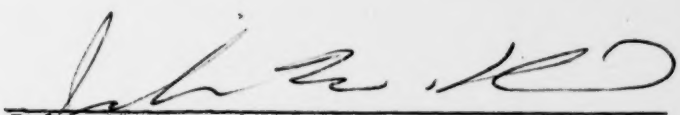

John W. Davis
Counsel for Respondents
(Appellants below)

II. JUDICIAL NOTICE

Rule 201. Judicial notice of adjudicative facts.

(a) *Scope of rule.* — This rule governs only judicial notice of adjudicative facts.

(b) *Kinds of facts.* — A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) *When discretionary.* — A court may take judicial notice, whether requested or not.

(d) *When mandatory.* — A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) *Opportunity to be heard.* — A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) *Time of taking notice.* — Judicial notice may be taken at any stage of the proceeding.

(g) *Instructing jury.* — In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

Wyoming Supreme Court note. — This rule does not affect the Uniform Judicial Notice of Foreign Law Act, §§ 1-12-301 through 1-12-306. Also unaffected by this rule are § 9-4-108 (d) and Rule 44.1, W.R.C.P.

Am. Jur. 2d, ALR and C.J.S. references. — 5 Am. Jur. 2d Appeal and Error §§ 606, 739, 740; 29 Am. Jur. 2d Evidence §§ 18, 22 to 122.

Uniform Judicial Notice of Foreign Law Act, 23 ALR2d 1437.

Reception of evidence to contradict or rebut matters judicially noticed, 45 ALR2d 1169.

Judicial notice of matters relating to public thoroughfares and parks, 48 ALR2d 1102.

Judicial notice of intoxicating quality, and the like, of liquor or particular liquid, from its name, 49 ALR2d 764.

Judicial notice of diseases or similar conditions adversely affecting human beings, 72 ALR2d 584.

Judicial notice of drivers' reaction times and of stopping distance of motor vehicles traveling at various speeds, 84 ALR2d 979.

Judicial notice as to assessed valuations, 42 ALR3d 1439.

Judicial notice as to location of street address within particular political subdivision, 86 ALR3d 484.

Federal or state law as governing federal court's authority, in diversity action after Erie R. R. v. Tompkins, to take judicial notice of law of sister state or foreign country, 7 ALR Fed 921.

What constitutes "adjudicative facts" within meaning of Rule 201 of Federal Rules of Evidence, concerning judicial notice of adjudicative facts, 35 ALR Fed 440.

4 C.J.S Appeal and Error § 1751; 5A C.J.S. Appeal and Error § 1604; 5B C.J.S. Appeal and Error § 1212; 31 C.J.S. Evidence §§ 6 to 102; 35A C.J.S. Federal Civil Procedure § 442.

III. PRESUMPTIONS

Rule 301. Presumptions in general in civil actions and proceedings.

(a) *Effect.* — In all civil actions and proceedings not otherwise provided for by statute or by these rules, a presumption imposes on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence.

(b) *Inconsistent presumptions.* — If presumptions are inconsistent, the presumption applies that is founded upon weightier considerations of policy. If considerations of policy are of equal weight neither presumption applies.

Wyoming Supreme Court note. — This is the uniform rule except the added word "civil" in (a).

Appendix B

Brief of Points and Authorities

. . .

IV

THE PRESENT DECISION LACKS ADEQUATE STANDARDS AND GUIDELINES FOR COMPLIANCE THEREWITH AND IS INDEFINITE, VAGUE AND UNCERTAIN.

The court in the instant decision has stated:

> "We will hold the Wyoming system of school financing unconstitutional in that it fails to afford equal protection in violation of the Wyoming Constitution."

And has suggested, without recommendation,

". . . abolition of local school districts and placing all school administration on a statewide basis, to dividing the state into a few multi-county districts, to making all mineral, commercial and industrial property in the state subject to a state tax for school purposes. . ."

The court has said:

"We affirm the proposition that as nearly as practicable, funds derived from advalorem tax levies must be equally divided amongst the school districts of the entire state."

and has further stated:

"Equality of dollar input is manageable. There is no other viable criteria or test that the Appellees show to exist. . ."

The court also states:

"The goal in any case is to arrive at financial parity."

Yet the court further stated:

". . . we are not suggesting that each school district receive exactly the same number of dollars per pupil as every other school district. . . We hold that exact or absolute equality is not required. . . In fact, a flat rate per student distribution of available resources may generate a constitutionally offensive classification. . ."

The Appellees would concur with the latter statement, and, if allowed a factual hearing, do expect to prove and show that even when "all" resources (spendable money) are taken into consideration, if there is equality based on a doller per A.D.M., the result would be an extremely inequitable and unfair discrepancy in the quality of education provided to pupils within Wyoming by reason of the "educational cost differentials" and "variances in individuals, groups and local conditions" to which the court refers, but which were not specifically named or considered. The Affidavit and Exhibits attached hereto as Exhibit "A" should help

to illustrate that there are differences not attributable to dollars.

By reason of the foregoing, there is not now - and there cannot be until a factual hearing is held in this matter - any clear guidelines, standards or mileposts by which the legislature, the district court, the State Board of Education, or any other party can determine that any system of school financing is "in conformity" with the directive of this court to "convert to constitutional compliance" or has enacted a "constitutional body of legislation."

If this court is concerned about the time or expense of the development of factual matters upon which to base a decision and with which there might be identified the conditions and factors, other than dollars, which affect any effective uniform, equal, thorough and complete educational program, the Appellees hasten to assure the court that pages of statistics such as the court has developed and used in this matter, can be stipulated without hesitation whenever material or relavent. Other documented, reliable information can also be stipulated, but the Appellees would require that there be stipulated information in addition to that alleged or desired by the Appellants. There should be considered course offerings, comparative test scores and ratings from college admission tests, school vocational programs and their need or demand, most of which, with the concurrence of the Appellants could also be stipulated. Testimony would then relate to the identification of "education cost differentials" resulting from "variances in individuals, groups and local conditions" to which the court may be referring, but which are not otherwise

identified.

In addition, the court has choosen to pay no "particular attention" to the question of finances for the physical facilities and has only mentioned the capital construction entitlements which were only this past year given substantial funding by the legislature. Such funding is a substantial equalizing factor (and the entitlement of each school district is equally available in the office of the State Superintendent of Public Instruction). Such funds are available not only for necessary construction, but also for:

> ". . . a continuing building project, including restoration and repair of existing buildings or improvements which would conserve energy." W.S. 21-15-102.

Such expenditure is a necessary and substantial portion of the current expenditure of most school districts, at least in so far as funds are available. The capital construction entitlement makes such funds available and would thereby release other revenues for instructional purposes.

In addition thereto, a factual hearing will show the substantial equalizing effect which has resulted from an increase of 34% in the amount of classroom unit valuation paid under the Foundation Fund. Such classroom unit value was increased from $20,300.00 for the 1977-78 school year to $27,300.00 for the 1979-80 school year. W.S. 21-13-309.

Supreme Court, U. S.
FILED
MAY 31 1980
MICHAEL RODAK, JR., CLERK

In The
SUPREME COURT OF THE UNITED STATES

No. 79-1728

HOT SPRINGS COUNTY SCHOOL DISTRICT NUMBER ONE, et al.,

Petitioners,

vs.

WASHAKIE COUNTY SCHOOL DISTRICT NUMBER ONE, et al.,

Respondents.

REPLY TO PETITION FOR WRIT OF CERTIORARI BY RESPONDENTS PARK COUNTY SCHOOL DISTRICT NO. SIXTEEN, CAMPBELL COUNTY SCHOOL DISTRICT NO. ONE, CONVERSE COUNTY SCHOOL DISTRICT NO. ONE, CARBON COUNTY SCHOOL DISTRICT NO. TWO, SWEETWATER COUNTY SCHOOL DISTRICT NO. ONE, AND LINCOLN COUNTY SCHOOL DISTRICT NO. ONE

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

NO. 79-1728

HOT SPRINGS COUNTY SCHOOL DISTRICT NUMBER ONE, and SUBLETTE COUNTY SCHOOL DISTRICT NUMBER NINE,

Petitioners,

vs.

WASHAKIE COUNTY SCHOOL DISTRICT NUMBER ONE, DONNA MOBERLY, MARY JANE SCHMELTZER, RANDALL RIDEOUT, HAROLD McDONALD, HARRY UJIFUSA, ROBERT MOODY and JAMES ARGERIS, being all of the members of THE BOARD OF TRUSTEES OF WASHAKIE COUNTY SCHOOL DISTRICT NUMBER ONE; MARY JANE SCHMELTZER as next friend for CHRISTOPHER SCHMELTZER, JOE SCHMELTZER, and FRANCES SCHMELTZER, minors; RANDALL RIDEOUT as next friend for JASON RIDEOUT, ANTHONY RIDEOUT, and MICHAEL RIDEOUT, minors; HAROLD McDONALD as next friend for KEVEN McDONALD, KEITH McDONALD, DAVID McDONALD, KENNETH McDONALD, and BRIAN McDONALD, minors; HARRY UJIFUSA as next friend for KELLY UJIFUSA and GAYLE UJIFUSA, minors; ROBERT MOODY as next friend for TODD MOODY, SHERRI MOODY, CINDY MOODY, JOHN MOODY, AL MOODY, and SCOTT MOODY, minors; and JAMES ARGERIS as next friend for JAYME ARGERIS, TAWN ARGERIS, and GRETT ARGERIS, minors; UINTA COUNTY SCHOOL DISTRICT NUMBER SIX, G. GRANT REDDEN, CLINT WALTER, F. DANNY EYRE, DONALD R. CARROLL and CURTIS MORGAN, being all of the members of THE BOARD OF TRUSTEES OF UINTA COUNTY SCHOOL

DISTRICT NUMBER SIX, FREMONT COUNTY SCHOOL DISTRICT NUMBER 25, DENNIS TIPPETS, L. J. GERAUD, PATRICIA B. FERRIS, ALICE KUCERA, STANLEY SMALLEY, and THOMAS YOUTZ, being all of the members of THE BOARD OF TRUSTEES OF FREMONT COUNTY SCHOOL DISTRICT NUMBER TWENTY FIVE, ALBERT B. SCHULTZ, ED HERSCHLER, Governor, State of Wyoming, LYNN SIMONS, State Superintendent of Public Instruction, SHIRLEY WITTLER, Wyoming State Treasurer, JOHN PATTON, KEITH WEST, DR. DENIS LYMAN, BARBARA ROGERS, KEITH BECKER, REDELL HOOPER, KAREN HAND, DR. DONALD BLAKESLEE, GLENN ENGLEKING, being all of the members of the WYOMING STATE BOARD OF EDUCATION, PARK COUNTY SCHOOL DISTRICT NUMBER SIXTEEN, CAMPBELL COUNTY SCHOOL DISTRICT NUMBER ONE, CONVERSE COUNTY SCHOOL DISTRICT NUMBER ONE, CARBON COUNTY SCHOOL DISTRICT NUMBER TWO, SWEETWATER COUNTY SCHOOL DISTRICT NUMBER ONE, and LINCOLN COUNTY SCHOOL DISTRICT NUMBER ONE,

Respondents.

REPLY TO PETITION FOR WRIT OF CERTIORARI BY RESPONDENTS PARK COUNTY SCHOOL DISTRICT NO. SIXTEEN, CAMPBELL COUNTY SCHOOL DISTRICT NO. ONE, CONVERSE COUNTY SCHOOL DISTRICT NO. ONE, CARBON COUNTY SCHOOL DISTRICT NO. TWO, SWEETWATER COUNTY SCHOOL DISTRICT NO. ONE, AND LINCOLN COUNTY SCHOOL DISTRICT NO. ONE

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

For the reasons and on the grounds set forth in the Petition for Writ of Certiorari docketed herein on May 1, 1980, the above-

designated Respondents hereby join in Petitioners' prayer that a Writ of Certiorari be issued to review the final Order and Judgment of the Supreme Court of the State of Wyoming, entered herein on February 8, 1980.

Respectfully submitted,

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Counsel for Respondents
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No. Sixteen, Campbell County
School District No. One,
Converse County School
District No. One, Carbon
County School District No.
Two, Sweetwater County
School District No. One,
and Lincoln County School
District No. One

Supreme Court, U.S.
FILED
JUL 14 1980
MICHAEL RODAK, JR., CLERK

No. 79-1728

In The
SUPREME COURT OF THE UNITED STATES

October Term, 1979

HOT SPRINGS COUNTY SCHOOL DISTRICT
NUMBER ONE, et al.,

Petitioners,

vs.

WASHAKIE COUNTY SCHOOL DISTRICT
NUMBER ONE, et al.,

Respondents.

PETITION FOR WRIT OF
CERTIORARI
To The Supreme Court of the
State of Wyoming

REPLY BRIEF OF PETITIONERS

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REPLY BRIEF OF PETITIONERS

To The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States.

Petitioners for their reply to the Brief for Respondents state:

Petitioners by their petition for rehearing to the Supreme Court of Wyoming challenged the initial consideration

of factual issues in such court whether by judicial notice or otherwise.

Petitioners did in their Petition for rehearing to the Supreme Court of Wyoming object to the consideration of any facts by that court, judicially noticed or otherwise, when no factual question or evidence was introduced by any party in either the trial court or appellate court nor any opportunity given to refute or controvert such evidence. See Appendix F, pages 15-17, Petition for Writ of Certiorari.

There were no factual issues raised in the trial court. The initial consideration of factual matters in the appellate court was improper. The Wyoming Supreme Court itself has stated that issues not raised before the trial court will not be considered for the first time on appeal. Scherling vs.

Kilgore (Wyo.) 599 P.2d 1352; In The Matter of State Bank Charter Application of the Security Bank, 606 P.2d 296, 300.

Factual knowledge on the issue, expert or otherwise, of the triers of the facts, is not evidence and cannot form the basis in whole or in part of the ultimate judgment. Morgan vs. U.S., 298 U.S. 468, 56 Sup. Ct., 906, 80 L.Ed., 1288.

The courts have considered similar attempts by administrative agencies to consider factual issues not raised at the hearing. The fact that there may be substantial and properly introduced evidence which supports the ruling is immaterial. A contrary conclusion would be tantamount to requiring a hearing in form but not in substance, for the right of hearing would be meaningless if the

tribunal were permitted to base its termination upon information received without the knowledge of the parties. A hearing requires that the party be appraised of the evidence against him so that he may have an opportunity to refute, test and explain it and the requirement of a hearing necessarily contemplates a decision in light of the evidence there introduced. English vs. City of Long Beach, (Cal.) 217 P.2d 22, 24; Cf. Ohio Bell Telephone Co., vs. Public Utilities Comm., 301 U.S., 292 57 Sup. Ct. 724, 81 L. Ed., 1093.

Due process should be as equally applicable in the judicial setting as in the administrative setting.

WHEREFORE Petitioner prays that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

ORIGINAL SIGNED BY
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